REMARKS

ON A

PAPER

Lately Publiſh'd, by a GENTLEMAN of the LAW,

Concerning ſeveral Claims made to a late deceaſed GENTLEMAN'S *Perſonal Eſtate.*

PREFACE.

THE Paper, on which I make the following Remarks, is of ſo conſiderable length, that to anſwer it, Paragraph by Paragraph, would require more Time than I can ſpare, or the Reader would care to ſpend. Beſides it would carry me, out of my Latitude, into the Depths of Law, which I leave to the Gentlemen of that Profeſſion.

I confine myſelf to the Caſe, as it is a Point of Conſcience: As ſuch I have treated it in the other Papers I have writ on this Subject, and as ſuch, I will treat it in the preſent Remarks, in which I will endeavour to ſhew, from general Principles of Equity, that the Caſe reſolved in Favour of Religious, was reſolved according to the Rule of Conſcience; and that there is nothing aſſerted in the ſaid Caſe, any ways Injurious to or Derogatory from the Civil Legiſlative Power, as is pretended by the Gentleman to whoſe Paper this ſhall ſerve for Anſwer.

He cannot take it ill, if I expoſtulate with him, for publiſhing, without my Conſent or Knowledge, a ſhort Deduction, in which I had reſolved the Caſe in Favour of Religious; that Paper was only deſign'd for the private Satisfaction of ſome few Gentlemen, and never intended for the Public. I think it is a Breach of the Laws of Society, to publiſh, without his Conſent, what a Gentleman has writ only for private Peruſal; ſince there is a Degree of Correctneſs required in what is offer'd to the Public, which is often pardonably overlook'd, when we only write for private Satisfaction.

I do not ſee how this Gentleman can think himſelf guiltleſs of the ſaid Laws of Society, eſpecially if, in that Paper he has publiſh'd, there are Aſſertions not only unguarded, as he pretends, but ſuch as ought to alarm Temporal Princes, and expoſe, if not the Writer, at leaſt the Paper to the Severity of the Laws. If ſuch is the Caſe, what Right had he to make Public a Writing he knew was only deſign'd for the Peruſal of ſome Few, a Writing which he thought a Reſolution againſt Conſcience in the Sight of God, and Criminal againſt the Laws of the Realm?

If I would uſe Retaliation, I have above one very uncorrect Paper, on the other ſide of the Queſtion, which I believe the Writers would not care to have expoſed in Public, tho' they thought them ſufficiently correct for private Peruſal. God forbid I ſhould ever make myſelf guilty of what I think an Injuſtice, and becauſe I differ in Opinion from others, do any thing that I apprehend can expoſe them to the Cenſure of the World. And thank God, the Paper which was publiſh'd without my Conſent, and contrary to my Deſign, affirms nothing which is not according to the Laws of Conſcience, and contains no Aſſertion, in its true natural Meaning, which tends to the leſſening of Secular Princes, or Diminution of their Legiſlative Power. I never reſolved a Caſe, to which I was not ready to ſet my Hand, nor maintain'd, in private, a Point of Conſcience, which I did not think I could juſtify in Public. Tho' every Body will allow a greater Circumſpection in Words and Exactneſs in Expreſſions is required before the Public, than in Private; conſequently, it would have been an act of Juſtice, either not to have publiſh'd the Paper without my Conſent, or, at leaſt, without giving me the Liberty to make, if I thought fit, neceſſary Amendments. He who has, with ſo much Time and Leaſure, writ the Paper, on which I am going to make ſome ſhort Remarks, thought proper, even after the Sheets were firſt drawn off, to make ſome Alterations, tho' inconſiderable, in ſo elaborate a Work, and a Work deſign'd for the Public. Should he not, according to the Rules of common Equity, have given me an Opportunity to do the ſame? This Juſtice having been denied me, I hope the Public will be more equitable, and give me the Liberty of vindicating the true Import of my Words, from the Conſtructions which have been forced upon them, to bring them to a Meaning which might lay my Opinions under Cenſure, and give the Gentleman, who writes on the other ſide of the Queſtion, a full Carreer to ſhew his Zeal for the Defence of the Secular Legiſlative Power. I reſpect it, as much as he does, who makes himſelf its Advocate: It is thus reſpected by all Canoniſts and Divines: And before I had read his Paper, they and I knew, that St. *Paul* teaches us Subordination and Obedience to Secular Power, in what regards the Civil Adminiſtration, with which Providence has intruſted them. The Purport of this Paper is to ſhew, that the Deduction N° 2. amongſt the *Copies of three Papers*, never invaded any Right of the Secular Legiſlative Power, nor

aſſerted

aſſerted any Right to the Succeſſion in Debate, which is in any Shape repugnant to the Laws of Conſcience. As it only is in regard to the Point of Conſcience, I have ever pretended to treat this Subject, I muſt mind the Gentleman on whoſe Performance I make theſe Remarks, and my Reader, that, as Claims are frequently made with a great deal of Juſtice, Honour and Conſcience, which notwithſtanding are ſet aſide by the Law; thoſe Gentlemen muſt certainly be in the wrong, who, becauſe they ſuppoſe the Claim I defend, would have been ſet aſide if tried by the Old Common Law, infer that the Claimants act contrary to Juſtice and Conſcience. The Rule of Honour and Conſcience as to this Point, of the Right of Claiming, are the fundamental Conſtitutions of the Religious who Claim, and if thoſe allow of ſuch Claim, it can be made in Conſcience. If the Laws of the Country, where the Claim is made, defeat this Right, and Sentence is pronounced by the Adminiſtrators of Juſtice, doubtleſs the Claimants muſt ſubmit, and obey the Authority Guardian of the Laws. This cannot be our Caſe, as it is a Point of Conſcience relating to the Rights of Religious, who, in the Circumſtances of this Country, have no Tribunal where their Right can be tried, and conſequently no Tribunal where it can be defeated, I mean as to the Point of Conſcience. I cannot ſee therefore by what Authority, and conſequently with what Equity, any private Perſon, in whatſoever Station of Life, can erect himſelf as Judge, and diveſt them of a Right, which they undoubtedly have, to Claim what they have a juſt Title to, according to their own Conſtitutions.

I have already prevented the Reader, that my Deſign is not to anſwer, Paragraph by Paragraph, the above-mention'd Paper, nor to follow the Author through every Epiſode and Digreſſion, which have ſwell'd his Sheets into a conſiderable Work. The Remarks I ſhould, in Juſtice to the Cauſe I defend, be forced to make on ſome of them, would carry me into Reflexions, not ſo ſuitable to my Eſteem of the Gentleman, whom I am ſorry to have for an Adverſary; and I had rather ſeveral of his Expreſſions and Reflections, which I am perſuaded are indeliberate Sallies of a Sanguine Attach to the Opinion he patroniſes, ſhould paſs unanimadverted, than be forced to make any Remarks which might give him, or the Reader, room to think I have not a true and real Value and Regard for his Family, Perſon and known Abilities.

To circumſcribe this Anſwer to the narroweſt Bounds, in which Remarks on the mention'd Papers can be compriſed, I will reduce it to the following Heads. *Firſt*, I will endeavour to rectify ſome general Notions, in which I cannot agree with my Adverſary. *Secondly*, I will make my Remarks on the Five Propoſitions, which he pretends to extract out of the Caſe ſtated N° 2. *Thirdly*, I will examine the general Scope and Tendency of his Writing, as far as it regards Conſcience; and *Fourthly*, make ſome Remarks on the Objections he ſuppoſes to have been made, and pretends to Anſwer. I take no Notice of the *Advertiſement to the Reader*, becauſe there is nothing in it, which the following Remarks will not ſet in a clear Light, excepting what he ſays towards the end, viz. *This Anſwer, if the* Caſuiſt *knew who the Perſon was that wrote that other Piece, was not quite ſo decent as it might have been, to a Gentleman of his Rank and Conſideration.* To which the *Caſuiſt* muſt anſwer, that the *Lawyer* rightly ſuppoſes the *Caſuiſt* did not know who was the Author of that Anſwer. It was not to his Purpoſe to enquire who was Author of the Paper, but to ſift the Reaſons therein alledged: Nor can he perceive in what he has deviated

from the moſt ſtrict Rules of Decency in every Expreſſion, unleſs it be look'd upon, *as not quite ſo decent* to point out the Miſtakes, and ſhew what he thought was wrong aſſerted by his Adverſary. I will always be very tender of the Regard, which is owing to every Gentleman, and hope, tho' in this Paper I am obliged to ſhew where I think my Opponent in the Wrong, ſo to do it, as to convince him I am as tender of his Character, as I am of the Cauſe I defend.

REMARKS

REMARKS.

I WILL begin theſe Remarks, as I intimated before, by endeavouring to rectify ſome general Notions, in which, I conceive, the Writer on the other ſide of the Queſtion, is miſtaken.

PART I.

FIRST, he affects, almoſt every where, to call the Laws, which he ſuppoſes incapacitated Religious in Catholic Times to have any Action at Law in their own Name and Right, he affects, I ſay, to call them *Catholic Laws*. He ſhould diſtinguiſh between *Catholic Laws*, and Laws made in Catholic Times: Becauſe the Expreſſion, *Catholic Laws*, as he ſeems to mean it, and would have it be underſtood, by putting it in Oppoſition to *Anticatholic Laws*, implies Laws made in Favour of Catholics and Catholic Religion. Now it is evident, that all Laws made in Catholic Times, cannot be called *Catholic Laws* in this Senſe; ſeeing the greateſt part of the Common Law and Statute Law, had no particular Relation to the Religion that was then Profeſs'd, but regarded purely the Civil Adminiſtration in this Realm.

SUCH was the Law, if any ſuch, in Queſtion. It did neither directly nor indirectly regard the good of Catholic Religion as contradiſtinct and oppoſite to the Reformation. That Common Law, which is ſuppoſed to have made Religious incapable of certain Rights, ſubſiſting, the Reformation might have gone on, upon the ſame footing it is now eſtabliſh'd: And that common Law could have been abrogated, without any Change in the Catholic Religion. Several Catholic Countries know no ſuch Law; Religious claim every day Inheritances which fall to their Members from the Inteſtate: the Authentical Sentence of the Supreme Tribunal of *Placentia* and *Parma*, which I have printed in the foregoing Sheets, is a demonſtrative Evidence of what I advance: They are Catholics, Catholic Religion ſubſiſts there in all its Force; how then can ſuch Laws, without which Catholic Religion does and can ſubſiſt, be called *Catholic Laws*, in the Senſe in which it is ſo often uſed, to aſperſe the Right I endeavour to vindicate.

LET us farther ſuppoſe, the Reformation had not taken Place, ſuppoſe Religious in particular had not been deraign'd and ſet at Liberty, ſuppoſe no Law had ever been made to that Effect; this *Catholic Law*, as it is call'd, might have been abrogated, for Example, by a *Statute* granting Religious all the Rights they have by Canon and Civil Law, and which they enjoy in ſome Catholic Countries. Whether ſuch Statute, would have prejudiced any part of the Civil Adminiſtration I enquire not, I am ſure it would not have affected the then practiſed Religion, and all *England* might have remain'd as Catholic, as before the Reformation, tho' there had been no Common Law, which brought the pretended Incapacities upon Religious. Thus formerly, according to the Law of *England* and antient Practice in Catholic Times, the Biſhop adminiſter'd to the Inteſtate, and the Reſidue was diſtributed to pious Uſes. It was Law; it was abrogated by ſubſequent Statutes: Did it ever enter into the Head of any one, to call ſuch Law a *Catholic Law*, or was the Abrogation of it any ways tending to the Diſadvantage of Catholic Religion? No certainly, it was a Law which regarded only the Civil Adminiſtration of the Kingdom, and could in no proper Senſe be call'd a *Catholic Law*. Thus, the Law, I am ſpeaking of, if ever there was ſuch a Law, could only regard the Civil Adminiſtration, and, howſoever ſuch Law ceaſed to have any binding Force in Honour or Conſcience, it can be no more ſaid, that it is a *Catholick Law*, abrogated by *Anticatholic Laws*, than it can be ſaid, that the antient Practice, in virtue of which the Biſhops adminiſter'd to the Inteſtate, was repeal'd by *Anticatholic abrogating Laws*. Wherefore the Affectation, both in Print and Diſcourſe, to call ſuch Laws, as are ſuppoſed to have brought the foreſaid Incapacity on Religious, to call them, I ſay, *Catholic Laws*, can only be to bring People into this Error, that Religious avail themſelves of the Suppreſſion of Laws made in Favour of Catholic Religion, and aſperſe them with that invidious Reflexion.

I ſaid, *ſuch Laws as are* SUPPOSED *to have brought the foreſaid Incapacity on Religious*; becauſe the Civil or Common Law does not, cannot, bring any paſſive Incapacity upon a Religious, inconſiſtent with his Native Right; and this is the ſecond general Notion I would have rectified. The Law ſuppoſes the Religious has, by his ſolemn Vows, made himſelf incapable of acting in his own Name and Right, and, conſequently to ſuch Suppoſition, will not admit him to claim in his own Name and Right. But theſe Laws neither do nor can extend the Obligation of his Vows, nor conſequently the Incapacity they bring upon him, beyond what the Vows themſelves import. As for the Vow of Poverty, which debarrs the ſolemnly Profeſs'd Religious, of not only Perſonal Property, but alſo Right to uſe any thing without Superior Leave, every Body knows, the Incapacity it brings on the Religious, is different, according to the different Conſtitutions and Rules, relatively to which each Religious is Profeſs'd. In ſome Religious Orders, the Vow of Poverty makes the Private Religious incapable of enjoying any immoveable Goods either in his own Particular, or in Common. Such are the *Capucins*, the *Minores de Obſervantia*, and the Profeſs'd Houſes of the Society of *Jeſus*. In other Religious Orders, the Vow of Poverty makes the Religious incapable of whatſoever Property Perſonal, whilſt it allows them to enjoy Property in common. And in the Society of *Jeſus*, tho' by the Vows they make at the End of their Noviceſhip, they become truly Religious, yet their Vow of Poverty brings upon them no Incapacity as to the retaining Property Perſonal, and in their own Right, tho' it hinders them from uſing any thing as their own, or without Leave of their Superior.

THE Incapacity therefore, under which Religious put themſelves by their ſolemn Vows, is different, according to the different Rules and Conſtitutions, relatively to which the Vows are made. Nor is it in the Power of any Legiſlature, whether Eccleſiaſtical or Secular, to extend this Incapacity further than it is extended by that Vow, by which the Religious has conſecrated himſelf to God. So no Legiſlature can (I mean as to Conſcience) oblige a Profeſs'd *Monk*, to embrace the ſtrict Mendicity of a *Capucin*, nor a Canon-Regular to that of the *Minores de Obſervantia*. It is true, the Eccleſiaſtical Legiſlative Power, without whoſe Sanction, no Congregation can be erected into a Religious Order, can antecedently to its approving ſuch Religious Order, oblige the Followers of it to certain Laws and Terms, which unleſs they ſubſcribe, they cannot be received; but when they are Profeſs'd, relatively to thoſe Laws and Terms, it cannot extend the Obligation they have taken upon themſelves by their ſolemn Vows. In the like Manner, the Secular Powers can oblige a Religious Community, to renounce a Right, otherways they will not admit them into the Kingdom; in ſuch Caſe, they Profeſs relatively to the ſaid Reſtraint, and ſo are made incapable of ſuch Right. The Practice is certain, and the Reaſon is obvious; becauſe every one who Profeſſes in a Religious Order, as he is, antecedently to his Vows, at Liberty to make or not make ſuch Vows, ſo he is at Liberty, a Liberty he has by the Law of God and Nature, to make them relatively to ſuch or ſuch Incapacity, by which, different Religious Orders, are differently affected. And no human Power can, contrary to his Free-will, force upon him an Incapacity, to which he has not wilfully ſubmitted, no more than they can force him to make thoſe Vows whether he will or no. The Incapacity therefore a Religious is under, of bringing an Action for Debt in his own Right, is not an Incapacity brought upon him by the common or Municipal Laws; but thoſe Laws, ſuppoſe him, by his Vows, incapacitated to have a Right to any Perſonal Property, and conſequently to this Suppoſition, ſet by the Claim he makes to whatſoever Property in his own Name. The Canoniſts as well as the Civilians and Divines, as to this Point, agree with what he ſays was, in *England*, Common Law. They all agree, that no Religious can, in his own Name, claim any Property or Right, they all Ground themſelves on the Incapacity he brings upon himſelf, at his ſolemn Profeſſion, of enjoying any Perſonal Property: And if he pretends no more, it was needleſs with ſo much Labour, to ſearch into our antient Cuſtoms, to prove, what no Body ever deny'd, *viz.* that a Religious Profeſs'd can claim no Property in his own Right and Name. The Paper mark'd N° 2. *in the Three Copies*, on which I write theſe Remarks, had it been duly conſider'd, would have ſpared the Gentleman all that Trouble; for it is there, in more than one Place, expreſly declared, that the Profeſs'd Religious can have no *Perſonal Property*, that he cannot claim any thing in his own Name and Right; and *Page ſixth*, it is ſaid, *Though, therefore, according to the Diſpoſition of the Old Municipal Law of* England, *a Religious Profeſs'd could not bring an Action for Debt, or claim a Succeſſion in his own Name; it is no where proved, that the Body, of which he was a Member, could not claim it in Virtue of the Right, they had acquired, by the Profeſſion of their Member.*

THIS was all along the Point in Queſtion: the Perſonal Incapacity of the Private Religious was never diſputed; I refer my Reader to the firſt Paper, I writ on this Subject, which the Gentleman has Publiſh'd under N° 2. It was therefore needleſs to prove what was never deny'd, and the Streſs of the

the Argument ſhould have been to ſhew, that, according to our Old Common Law, a Religious Body could not bring an Action for a Debt, or a Succeſſion, in Virtue of a Right they had acquired by the Profeſſion or voluntary Donation of their Religious. He grants Page 19. that our Antient Laws are *abſolutely ſilent* as to this Point. From whence I will conclude at preſent, that our Antient Laws being abſolutely ſilent as to this Point, *whether a Religious Body could not have an Action for a Debt, or a Succeſſion, in Virtue of a Right, they had acquired by the Profeſſion or voluntary Donation of their Religious*, which, from the Beginning of the Diſpute was the Principal Queſtion, I will conclude, I ſay, that he ought to rectify the Miſtake, he ſeems all along to be in, when he imagins, that becauſe we aſſert, a Religious Body can claim a Property through the Right of her Profeſs'd Religious, we likewiſe aſſert, that the Profeſs'd Religious can claim the ſaid Property in his own Name and Right. There is a wide Difference between the two Aſſertions, we have conſtantly denied the one and maintain'd the other; and as the Antient Laws are *abſolutely ſilent*, in regard to the Aſſertion we maintain, it follows, that there was no Common Law in Catholic Times, by which Religious Communities were made incapable of Claiming Property, through the Right of their Religious, which is the Solution of the Preſent Caſe.

PART II.

HAVING ſhew'd here, *Firſt*, that it is an Abuſe of Terms, to call Laws, which regarded only the Civil Adminiſtration, without any Reference to the Good of Catholic Religion, to call them, I ſay, *Catholic Laws*, becauſe they were made in Time of Catholics..... *Secondly*, that the Incapacity of a Religious to inherit or poſſeſs temporal Goods, is not an Incapacity, under which he is laid by the Secular Law, but an Incapacity proceeding from his ſolemn Vow, conſequently to which Incapacity the Secular Law denies him an Action at Law in his own Name..... *Thirdly*, and Principally, that in the Preſent and Similar Caſes, it is not the Profeſs'd Religious that Claims an Inheritance in his own Name or Right, from which he is debarr'd by both Secular and Eccleſiaſtical Law, but that it is the Body or Monaſtery, who Claim in Virtue of a Right they have through their Religious; having, I ſay, clear'd theſe Three Points, which I muſt deſire the Reader to have before his Eye, I will begin the General Remarks, I deſign to make upon the Paper in Queſtion.

THE Author from Page 7. where begins the Paper mark'd N° 3. to Page 14. Parag. *Having therefore*; endeavours very ſolemnly, and learnedly to prove, that *the Rule we are, and always were in Catholic Times, to go by, in matters of Temporal Property, was and is the Law of this Realm, and not the Law of any foreign Country, either Canon, Civil, or any other whatſoever.* If he had not given to my Aſſertions, a Meaning which I had not; a Meaning which is not proper to them in their Natural Senſe; a Meaning which cannot be forced upon them but by the moſt violent Conſtruction, he might have ſpared himſelf all that Labour, and it would have been needleſs for him to engage in a Queſtion of ſo nice a Nature amongſt Catholics, as is that of fixing the Bounds betwixt Eccleſiaſtical and Secular Authority. Cardinal *Richelieu*, who was ſo zealous for maintaining the Temporal Authority of the Prince, whom he had the Honour to ſerve, tells us in his *Teſtament Politique, chap. 2. Sec. 9.* that it is very hard, for even the moſt Learned, to diſtinguiſh between the Limits of Eccleſiaſtical and Secular Power. He will have you neither believe thoſe who through an undiſcreet Zeal favour the Eccleſiaſtical Power, nor the Gentlemen of the Law, who ordinarily Meaſure, ſays he, the King's Power by the form of his Crown, which being Circular has no End. He will have you believe only, People ſo learned, that they cannot be deceived through Ignorance, and ſo equitable as to be no ways biaſs'd, in Favour of either one or the other Power. As I am fully convinced, that I want the firſt of the Qualities, required by that great Man, to determine in a Cauſe of ſuch Importance, God forbid, I ſhould enter into a Diſpute on that Subject. If the Gentleman, whom I anſwer, has meaſured the Secular Power by the form of the Regal Crown, I will take from it no Jewel, no Civil Effect which can make it moſt binding to the Subject. Nothing I have aſſerted in the Paper which is impugn'd, tends to the leaſt Diminution of Regal Authority and Secular Power, nor did I any where pretend to ſet up the Canon Law *as a Rule of Property*.....to the Overthrow of the Common Law of this Realm, as it is wrongfully aſſerted Page 7. Parag. *here then we find.* I affirm'd indeed, that in ſome particular Caſes, the common Law which is the Rule of Property, howſoever binding it may be as to Civil Effects (which force I no where denied to the common Law) is not always the Rule of Conſcience, and that we may in Conſcience in ſome Caſes make a Claim, tho' it will be defeated if tried at Common Law. This I affirm'd, and ſtill maintain: And I will endeavour to make good, by and by, that the Common Law, which is the Rule of Property, is not always, with Relation

to

to Property, the Rule of Conſcience; contrary indeed to what the Gentleman pretends to prove, but conformable even to his own Conceſſions.

To bring my Remarks on what is ſaid from *Page* 7. to *Page* 14. into ſome Order, and avoid the Confuſion in which the Reader is thrown, by unneceſſary Epiſodes and Diſgreſſions; I will firſt examin how fairly he has ſtated my Sentiments, and then canvaſs the prolix Diſcourſe he makes upon Five Propoſitions, he attributes indeed to me, but in which I can neither ſee my own Words nor Meaning. He owns *Page* 9. that the Five Propoſitions are laid down *perhaps in ſofter Language*, in the Paper out of which he pretends to extract them, than what he gives them. Would it not have been a piece of Juſtice, that publiſhing the ſame Paper, which was only deſign'd for the private Satisfaction of ſome few, and publiſhing it without my Knowledge or Conſent, he ſhould at leaſt put the moſt favourable Interpretation on my Words, if not on my Words, on my Meaning, and not expreſs it, as he grants to have done, in harſher Terms, to make it more ſhocking to his Reader. Had he expreſs'd my Meaning in my own Words, all he has writ to Page 14. would have been needleſs. He would have ſaved himſelf a great deal of Pains, and me the Labour of making theſe Remarks.

The Firſt of the Five Propoſitions, to which he reduces my Meaning, is expreſs'd by him as follows. Where *the Rights of the Regular Clergy come in Queſtion, tho' they concern matters of a Temporal Nature, the Canon Law is ſuperior to, and may controul the Law of that Country where the Queſtion ariſes; and it is againſt Conſcience to ſet up the Rule of ſuch Law, in Oppoſition to the Rule of the Canon Law.* I muſt needs own, when I read the Propoſition which is here given for mine, I was ſurpriſed to find a Gentleman of his Character miſrepreſent ſo far, both my Words and Meaning, that I cannot acknowledge either, in the Terms in which he has expreſs'd them. The Words of the Deduction printed by him N° 2. out of which he forms this and the two following Propoſitions (they are the only in that Paper that have any Reference to this Point; and are *pointed* at in his Margin, to ſhew the Streſs he deſigns to lay upon them) are: *Thirdly, that however ſuch a Law might be binding as to Civil Effects, it could not be Obligatory in Conſcience, in regard to thoſe Religious, who by their own Conſtitutions, and the Canon Law were not incapable of Property; becauſe no Secular Law can, derogatory from the Canon Law, deprive a Religious Perſon of a Right he has by the Law of God and Nature; which is of diſpoſing of himſelf and what he has, and conſecrating it to the Service of God..... and this is the conſtant Opinion of Divines.* This is the only Place he can ſhew in that Writing which he could diſtort to the forced Interpretation out of which he has form'd the Firſt, Second and Third Propoſitions, he gives as the Subſtance of my Deduction. Tho' I do not doubt but the Reader will ſee the wide Difference there is, betwixt what I ſay, and what he makes me ſay, I hope I ſhall be excuſable if I point out to him ſome Material and Eſſential Variations in the one from the other. *Firſt*, he makes the Propoſition univerſal and extends it to all whatſoever Rights of the Regular Clergy in matter of Property, whereas my Propoſition only aſſerts it, in one particular Caſe, in which I ſuppoſed the Religious to *have a Right by the Law of God and Nature*, of which Right no Laws can deprive him, ſo far as to oblige him in Conſcience not to Claim ſuch Right, unleſs by the Direction of Canon Law, relatively to which he has made his ſolemn Vows, he has renounced ſuch Right; as by the ſaid Direction he has renounced all Property Perſonal. Wherefore theſe Words, *derogatory to the Canon Law*, are not to be underſtood of any new Right concerning Property, given him by the Canon Law, but of a Right he had by the Law of God and Nature, antecedently to his Profeſſion, and which, at his Profeſſion he is not obliged to renounce, by the Direction of Canon Law. *Secondly*, he makes me ſay, *The Canon Law is ſuperior to, and may controul the Law of the Country where the Queſtion ariſes*, that is, conſequently to what he ſaid juſt before, in all matters of Eccleſiaſtical Property. I ſaid no ſuch thing. For to be Superior to the Law of the Country ſo as to controul it, is as I take it, as I believe the Reader will take it, as I am ſure the Gentleman means it, and expreſſes it in the next Propoſition he gives as mine, is, I ſay, to make it null and void: Whereas I expreſly ſaid, that tho' ſuch Law *might be binding as to Civil Effects, &c.* which certainly denotes, that as I did not ſay, ſo I did not mean, that in matters of Property, the Canon Law had ſuch a Superiority, as to controul, make null and void the Law of the Country, ſeeing I granted it all the binding Force, as to Civil Effects, the Legiſlative Authority of the Kingdom can give it. He is not appriſed, that a Law's being binding as to Civil Effects, and its being binding in Conſcience, are two different things, very ſeparable, and often ſeparated, as I ſhall have a more proper Place to ſhew inconteſtably hereafter. *Thirdly*, he makes me ſay that, *it is againſt Conſcience, to ſet up the Rule of ſuch Law, in Oppoſition to the Rule of Canon Law.* I ſaid no ſuch thing, my Words import no ſuch thing. I ſaid indeed, that

Law,

Law, a Law which deprived a Religious Perſon of a Right he had, by the Law of God and Nature, howſoever it might be binding as to Civil Effects, *it could not be Obligatory in Conſcience.* There is a wide difference between this Propoſition, *ſuch a Law is not Obligatory in Conſcience*, and this other Propoſition, *it is againſt Conſcience to make ſuch a Law.* A Law may be very juſt, and conſequently be eſtabliſh'd in Conſcience by lawful Authority, which does not bind in Conſcience, at leaſt, before the Sentence of the Judge. I talk of Laws, even ſuch as relate to Property; tho' after the Sentence of the Judge, the Claimant is obliged to acquieſce, and ſubmit to the Law as to the Civil Effects. Notwithſtanding which, he retains a true Right in Conſcience to that Property, which by the Law has been given from him; and ſuch a Right, as the adverſe Party is, in Conſcience, obliged to make good, notwithſtanding the Law has adjudged to him that Property, which was, and is ſtill, truly the Claimants. For Example, *Peter*, who ow'd *John* a Sum of Money, pays him without taking a Receipt: *John* takes this Advantage, and ſues *Peter* for the Payment of the ſaid Sum: *John* proves the Debt; *Peter* has no Voucher for the Payment; doubtleſs the Law will be in Favour of the Claimant, and *Peter* condemn'd to pay the ſaid Sum. Notwithſtanding which, will not *Peter* retain a Right in Conſcience to that Property, which is given from him by the Law, and has not *John* an Obligation in Conſcience, an Obligation founded on the Laws of Natural Equity, to reſtore that Property to *Peter*. Nevertheleſs the Law was juſt, the Judge who pronounced the Sentence was juſt, becauſe he muſt judge according to the Evidence and Proofs alledged. I could Inſtance in a hundred Examples: But this is ſufficient to ſhew, that it is quite different to ſay, *ſuch a Law is not Obligatory in Conſcience*, and to ſay, *it is againſt Conſcience to ſet up ſuch a Law:* And conſequently the Gentleman did not deal candidly, when he ſet up this ſecond Aſſertion in lieu of mine, which was the firſt. But, ſays he, in an Annotation, *Page* 8. *He tells us expreſly* (in another Paper) *that the Eccleſiaſtical Immunities* (or Exemptions) *cannot be reſtrain'd by the Civil Power; and that no antient Civil Law in* England, *can now have any binding Effect in Honour or Conſcience.* Theſe laſt Words make me think he never read the Paper out of which, he pretends, they are taken, and that he took them upon Truſt from ſome Body, who has not ſo much Honour and Conſcience as himſelf; for there is no ſuch Saying, nor any thing like it, in all that Paper: Unleſs it be the ſame to ſay, *ſuch a Law which was formerly the Practice in* England, *and does not now ſubſiſt, is not now Obligatory in Honour and Conſcience:* And to ſay, *no antient Civil Law in* England, *can now have any binding Effect in Honour or Conſcience.* Concerning which I appeal to the Honour and Conſcience of thoſe, on whoſe Truſt he inſerted that Propoſition. As for the firſt Part of the Aſſertion, *That the Eccleſiaſtical Immunities cannot be reſtrain'd by the Civil Powers*, it is ſo far true, according to all Canoniſts and Divines, that no Civil Law can, without the expreſs Conſent, or tacit Connivance of the Eccleſiaſtical Legiſlature, reſtrain them ſo as to take away the Right they have in Conſcience, tho' ſuch Law may take away the Right as to all Civil Effects. I have ſhew'd, juſt before, how a Law can be binding as to Civil Effects, which is not binding in Conſcience; and I ſhall ſoon bring, for this Diſtinction, Authorities which I hope he will not refuſe, being the Authority of the Legiſlative Power of *France*, on which he ſeems to lay ſo much Streſs in ſome Places. The Words he cites out of Cardinal *Lugo*, are that Authors, and cited in the ſaid Paper; he might have quoted out of the ſame Paper the Words of *Layman* and *Leſſius*, the laſt of which is ſtill ſtronger, and a Name not unknown even to our Lawyers; many of them, as I am inform'd, not thinking it loſt Time to read that learned Author's Treatiſe, *de Juſtitia & Jure.* As for *Vitus Pichler*, he makes him ſay, what he does not ſay in that Paper, to wit, *that the Law-makers incur Excommunication, ipſo facto.* Perhaps he was unwilling to put ſuch a Saying in the Mouth of the great *Leſſius.* Whether or no any of theſe Divines carry their Opinion farther than he likes, and extend it beyond my Aſſertion, is foreign to our Purpoſe, I cited them to ſhew my Aſſertion did not deſerve to be call'd Raſh, in ſo good Company. No one can from thence infer, that I adopt their Opinion in the whole Latitude they give it; the Gentleman, I anſwer, cites more than one Authority, without giving into the whole Length the Authors, he cites, give to their Opinion. I muſt beg the ſame leave, and deſire my Opinion may be meaſured by my own Aſſertion, tho' in Confirmation of it, I have cited Authors, who perhaps carry their Sentiments to a Length to which I did not extend mine. As for the Authors I mention'd, their Books are public, and paſs uncenſured in every Catholic Country; tho' he is pleaſed to ſay, in an Annotation, *Page* 25. *They are often taken Notice of in Monſieur* Paſchal's *Provincial Letters*; Leſſius *is particularly noted for maintaining the depoſing Power: And* Vitus Pichler *treads in their Footſteps, as it ſeems, exactly.* I begin with theſe laſt Words, Leſſius *is particularly noted for maintaining the depoſing Power, and* Vitus Pichler *treads in their Footſteps, as it ſeems, exactly.* It would have been but equitable, if he had

 pointed

pointed out the Place in which *Leſſius* teaches ſuch Doctrine. I have turn'd to all the Places in his Treatiſe, *de Juſtitia & Jure*, which I thought could have any Relation to ſuch a Subject, and cannot find the leaſt Veſtige of any ſuch Doctrine. I am ſure he writ no Treatiſe peculiarly on that Subject; ſo, I think, I have a Right to deny the Aſperſion laid upon him, at leaſt till it is proved, by pointing out the Place which makes him ſo noted for teaching it.

THE ſame muſt be ſaid in regard to *Vitus Pichler*. I am ſure he teaches no ſuch Doctrine, in any of the Places I quoted out of him, and have very ſtrong Grounds to believe my Adverſary never ſaw any more of that Author, than what he read in my Paper, and conſequently could not, in Juſtice to him, accuſe him of teaching ſo odious a Doctrine. But it ſeems he has *been told, that*, Lugo, Layman, Leſſius, *and* Sanches, *are often taken Notice of in Monſieur* Paſchal's *Provincial Letters*. A proper Authority truly to blaſt thoſe great and learned Divines! Thoſe, who told the Gentleman ſo, and ſuggeſted *Paſchal*'s Provincial Letters for his Voucher, ſhould, in Juſtice to him, have let him know, that thoſe infamous Letters, full of Falſities and Calumnies, have been burnt by the Hands of the common Hangman, not only by the Eccleſiaſtical, but alſo by the moſt reſpectable Secular Courts and Authority. They were by the Parliament of *Provence*, in the Year 1656, condemn'd to be publickly burnt, as being full of *Calumnies*, *Falſities* and *Defamations*; they were condemn'd by the Pope the ſixth of *September* 1657: and four Biſhops, and nine Doctors of Divinity, whom the King of *France* had Commiſſion'd to examine them, having given in their Opinion the ſeventh of *September* 1660, conſequently to the Judgment they paſs'd on them; by a Decree of the Council of the twenty fifth of the ſame Month, it was order'd, that they ſhould be given up to Mr. *D'Aubray Lieutenant Civil* at the *Chatelet*, in order to have them, at the Requiſition of the Sollicitor General of his Majeſty, tore and burnt, at the *Croix du Tiroir*, by the Hands of the Hangman: On the eighth of *October*, the *Lieutenant Civil* iſſued Orders for Informations to be made againſt the Authors of the Book, the Printers and the Hawkers, and moreover, that it ſhould be burnt, according to the Decree of the Council; which was executed the fourteenth of the ſaid Month, as appears from the Regiſters of the *Chatelet*. This being undeniable, I think, in Juſtice to the Gentleman who cited the Authority of theſe infamous Letters, thoſe who ſuggeſted to him ſuch Vouchers, ſhould have inform'd him what Fate they met with in Catholic Countries, even in *France*.

I come to the Second Propoſition, he pretends to extract out of the Writing, placed by him, N° 2. The Reader will obſerve, that the three Firſt Propoſitions, of the Five, to which he reduces the whole Subſtance of that Paper, are only different Tortures, to which he has put that one ſingle Propoſition of mine, which I have cited Word for Word a little before, the Beginning of which is, *Thirdly, that however ſuch a Law*, &c. and conſequently, having here already ſhewn the true Senſe and Meaning of that Propoſition, I will only briefly take Notice of ſome turns he gives it in theſe two next Propoſitions, to make it appear moſt odious. He makes me ſay again in the Second Propoſition, that if the Laws of the Country are not Conſonant to the Canon Law, and contrary to the Rights Religious have by the Law of God and Nature, then *ſuch Laws are in Conſcience null and void*. I have clearly ſhew'd him before, the wide Difference there is between my aſſerting, *That ſuch a Law howſoever it might be binding as to Civil Effects, is not binding in Conſcience*, and his making me ſay, *ſuch Laws are in Conſcience null and void*. To ſhow this Point more fully, let us ſuppoſe, before the Reformation a Profeſs'd Religious had been grievouſly beat and abuſed; it is certain he had a natural Right, an indefeaſible Right, to have Juſtice done him; no equitable Law, no juſt Law, can refuſe him that common Protection againſt Violence, which is the chief Support of human Society; conſequently he has a Right in Conſcience, founded on the Laws of Natural Equity to demand Juſtice. And doubtleſs the Laws of the Kingdom, ſome way or other, provide that Juſtice ſhould be done him. I am told by eminent Lawyers, that the Law directed, that in this, and other Caſes in which he could not ſue in his own Name and Right, he ſhould bring an Action jointly with his Superior. Now tho' at Common Law he could not maintain an Action in his own Name and Right, notwithſtanding ſuch Common Law was binding, as to the Civil Effect, in ſuch manner that he could not obtain Juſtice, in an Action brought in his own Name without his Sovereign, that Law could have no Effect, in Conſcience, by which he was made incapable of claiming and obtaining Juſtice. But tho' I allow, as every Body elſe muſt, *That ſuch Law, howſoever binding as to Civil Effects, could not be Obligatory in Conſcience:* Do I, or can he force theſe Words ſo as to make me ſay, *That ſuch Law was in Conſcience null and void*. No, ſuch Law might be very juſt and equitable, becauſe it does not abſolutely refuſe that Juſtice, to which the injured Religious had a Right, but only refuſes it, as it is claim'd in an undue Manner, the Religious being, by his Vows, incapacitated to ſue in his own Name. If the Law pretended to incapacitate directly the Religious to have a Right to

Juſtice,

Juſtice, ſuch Law would, doubtleſs, be unjuſt; becauſe no Law can juſtly deprive an innocent Perſon of the Protection of the Legiſlature, which, according to the Laws of Nature, is common to all thoſe who are Subjects to the Law, till they have, by their Crimes, forfeited that Common Benefit of Protection.

WHAT has been ſaid is quite ſufficient to clear me from the odious Propoſitions to which he has forced my Meaning, and to ſhew that a Law may be juſt and binding as to Civil Effects, tho' not always binding in Conſcience. I will only remark on the Third Propoſition, which he forces upon me, that inſtead of making me ſay, as I do, that ſuch a Law *cannot deprive a Religious Perſon, of a Right he has, by the Law of God and Nature*; he makes me ſay, *That ſuch a Law was an Oppreſſion upon the Regular Clergy, a Violation of their Rights from God and Nature, and was void.* He had Reaſon to ſay, a few Lines after, that theſe Propoſitions were laid down, in the Writing out of which he pretends to extract them, *perhaps in ſofter Language.* I believe the Reader will ſay, he cannot ſee that the Three ſaid Propoſitions, are *either expreſly laid down*, or any ways implied, in the Diſcourſe of that Paper.

I come to the Fourth and Fifth Propoſitions, which he gives for *either expreſly laid down*, or *apparently implied* in the ſaid Diſcourſe. I cannot ſee how he will make this out, unleſs he can perſuade the Reader, that *Yea* either *expreſly* ſignifies, or *apparently implies No*; and *No*, likewiſe, implies *Yea*. The Fourth Propoſition as ſtated by him is, *That as the Civil Effects of theſe Incapacities, are taken away by the Rules and Maxims, introduced by the Statute of* Henry VIII. *whereby Religious were deraign'd, and diſcharged of their Vows, they are now reſtored to their original Rights, which they are intitled to from God and from Nature, and therefore may, ſafely and with a good Conſcience, lay hold of whatſoever the Letter of the Laws of this Country will now permit them to enjoy; and that notwithſtanding the ſaid antient Incapacities*, &c. This Propoſition, he ſays, is *either expreſly laid down*, or *apparently implied* in the mention'd Writing. He will excuſe me if I tell him, that the contrary of this Propoſition is not only *apparently implied*, but expreſly laid down in that Writing. I will be ſhort upon it, not to be drawn into ſome Expreſſions, which ſo unfair dealing, might force in a more circumſtantiated Anſwer. ThePaper wherein this Propoſition is ſaid to be *expreſly laid down*, or *apparently* implied ſays, Page 5. (as it is printed with the Sheets I anſwer) *Parag. the Principal*, that, *we readily grant, no Catholic can, in Conſcience, avail himſelf of Laws made to the Prejudice of Catholic Religion.* And *Page* 6. Parag: *And whereas*, it ſays, *And whereas this Right does not accrue from any Act of Parliament, made at, or ſince the Reformation, by which all Religious are deraign'd, and permitted to enjoy Property.....but from the Diſpoſition of the Canon Law; it cannot be ſaid that* B. *avails himſelf of any Law made in Prejudice to the Catholic Religion.* Theſe being the only Places in the ſaid Paper, out of which he could extort his Fourth Propoſition, I muſt ask him how he thought to ſhew his Reader, that in theſe Words, it is *either expreſly laid down*, or apparently implied, that they avail themſelves *of the Statute of* Henry *the* VIIIth. *whereby the Religious were deraign'd and diſcharged of their Vows*, that, *they can, in Conſcience, lay hold of whatſoever the Letter of the Laws of this Country* (the Laws he means by which Religious were deraign'd) *will now permit them to enjoy.* The Contradictory to theſe Aſſertions is laid down, in as plain Terms as can be, in the above quoted Places; by what Legerdemain he ſubſtitutes, in lieu of this, the other Extream of the Contradictory, I muſt leave to more ſubtle Eyes than mine, to find out the *Deceptio Viſus.* As for the Fifth Propoſition, I will give no other Anſwer to it, than he has thought fit to give Page 10. *Parag. But the Gentleman*; only returning him his Compliment in his own Words. I anſwer therefore; the Fifth Propoſition being entirely his own as to the Subſtance, as the other four were, and not mine, *the Fifth Propoſition.....* is very far from *deſerving to be treated in a grave way, and to take Notice of it in any other way, might lead one from that Rule of good Manners, which ought always to be obſerved towards this Gentleman and his Friends.* Tho' I ſaid, that this Fifth Propoſition was not mine as to the Subſtance, I will not deny but there may be as many of my Words in that Propoſition, as in any of the others. But when a few Words added to them, give my Words a contrary Senſe to that which they import, I have Reaſon to ſay the Propoſition is not mine as to the Subſtance. Theſe Words, *that claim in this Manner*, change the whole Subſtance of the Propoſition; they make the Propoſition relative to the Fourth Propoſition, wherein it is aſſerted, that the Religious claim under the Benefit of Laws made in hatred of Catholic Religion; and then he concludes that I ſaid, *that whoſoever affirms that Religious claiming in this Manner* (that is, claiming in Virtue of Laws made againſt Catholic Religion) *means only to bring an invidious Aſperſion on the Aſſertors of theſe Propoſitions:* Whereas I ſaid, that, *whereas ſuch Right did not accrue from any ſuch Act of Parliament* (made in hatred of Catholic Religion, or giving Liberty to, and deraigning Religious) *but from the Diſpoſitions of the*

Canon Law, it cannot be ſaid, that B. *avails himſelf of any Law made in Prejudice to the Catholic Religion.* Have I not Reaſon to ſay in the Gentleman's own Words, that the Fifth Propoſition, as ſtated by him, is *far from deſerving to be treated in a grave Manner.*

HAVING made it evident, that none of the odious Aſſertions, in the Five Propoſitions, on which I have been making Remarks, are, either *expreſly laid down*, or *apparently implied* in the Writing out of which they are pretended to be extracted; it will be needleſs to examine in Particular, all the Proofs he alledges, with all the Epiſodes and Digreſſions, which make up the Subſtance of the Arguments, by which he impugns thoſe Propoſitions of his own making. But whereas he ſeems chiefly to make it his Buſineſs, to render all Canon Law odious, as a declared Enemy to Secular Power and Civil Authority, I will endeavour briefly to clear Canon Law, Canoniſts and Divines, from the Vague, and falſe Miſrepreſentations under which they are expoſed in his Performance. Tho' I will firſt take Notice of what he ſays in the two Paragraphs immediately following the Five Propoſitions. The Subſtance is, that thoſe Propoſitions, being expreſly laid down, or apparently implied in the Writing he attacks, it conſequently follows, that the Author of that Writing has laid the moſt heavy Charge of Violence and Oppreſſion, not only upon the Laws of *England*, but alſo of moſt Catholic Countries. To which I briefly anſwer, that none of thoſe Five Propoſitions being either expreſly laid down, or apparently implied in the ſame Paper, the Writer of it is free from the Imputation, of laying any Charge of Violence and Oppreſſion on the Laws. It is true, I ſaid, that the Laws which took away from Religious Perſons a Right, which they had by *the Law of God and Nature*, however they might be binding as to Civil Effects, were not binding in Conſcience; and I have here ſufficiently ſhew'd, that he cannot from thence infer, that ſuch Secular Laws are unjuſt, much leſs that they are null, and a Violence and Oppreſſion. He himſelf, Page 9. Parag. *Let not*, grants that in moſt Countries, *Contracts, Promiſes or Obligations, concerning Lands, if not in Writing, are void.....yet in many Caſes (if not in all) they may be good in Conſcience.* From which I will argue thus; *Peter* has, by a Contract, not in Writing, given to *John* a Right, in Conſcience, to a certain Piece of Land. Afterwards *Peter* refuſes to execute this Contract. If *John* ſues *Peter*, the Law of the Country, where ſuch unwritten Contracts are void, will determine in Favour of *Peter*. Yet *John* could claim this Right in Conſcience, and *Peter* will ſtill remain bound in Conſcience, to fulfil the Contract he had made with *John*. Whence it evidently follows, that *John* can have a Right in Conſcience to a Property, which is, contrary to his Right, diſpoſed of by the Common Law. To puzzle the Cauſe, he has ſtated the Caſe otherways, and, ſuppoſing that *John* is dead before the Contract is fulfill'd, will have it reſolved, how *Peter* is obliged to fulfil it in regard to *John*'s Heirs. This Queſtion, to be rightly reſolved, ſhould be ſtated in as many different ways, as there are different Suppoſitions, relatively to which the Contract, Promiſe or Obligation could be made. I anſwer in general, that ſuppoſing the Contract, Promiſe, or Obligation was made, to *John* and his Heirs, then, doubtleſs, *Peter* is to fulfil it in regard to thoſe who are his Heirs according to the Law of the Country: But what this makes to the preſent Purpoſe I cannot ſee.

I will now ſhew very briefly, that the Canon Law, Canoniſts and Divines, are far from diminiſhing the Authority of Temporal Princes or their Legiſlative Power. They lay it down as a Maxim, that the Eccleſiaſtical and Civil Legiſlature, as to the Laws which regard the Spiritual and Temporal Adminiſtration, are quite diſtinct Powers, each to be obey'd in their proper Tribunals. *Layman* (I hope the Gentleman will change the bad Opinion he has conceived of him) lays it down as undoubted, *l.* 1. *T.* 4. *c.* 6. Parag. Cæterum. *That the two Powers, Civil and Eccleſiaſtic, being as to their Office and Dignity diſtinct, and each perfect in its Kind, and ſufficient of itſelf, it follows, that the Power of Eccleſiaſtical Prelates, even of the Pope, cannot be directly extended to the Laws and Civil Cauſes of other Kingdoms.* As *Nicholas* the Firſt *teaches*, in Epiſt. ad Michaelem Imperat: *which begins*, Propoſueramus quidem. *And* Alexand. III. c. Si duobus Parag. *denique* de Appell: Where it is ſaid, that one cannot appeal from the Sentence of a Judge in Civil Matters, to the Holy See, out of the Temporal Juriſdiction of the Pope. And *Vitus Pichler* (I ſuppoſe he will as to this gain ſome Credit) Tit. 2. *de Conſtitu.* Parag. 3. n. 34. *The Pope cannot make Laws directly relating to Temporal Matters, out of his own Temporal Dominions*, Molin. Suarez. l. 3. de L. L. c. 6. n. 3. *And it is the common Opinion of the others* (Divines and Canoniſts.) This is ſufficient to ſhew, that the Canon Law, Canoniſts and Divines are far from derogating from the Temporal Authority of the Secular Legiſlature, and that the Gentleman has wrong'd them, when he endeavours to make them appear in ſo odious a Light, miſrepreſenting them, as if they were deſtructive of all Secular and Temporal Authority. *Domat*, of whoſe Authority he is ſo fond, neither did nor could ſay more, upon the Difference of the two Powers, and their diſtinct Authorities: ſo that I cannot ſee, on what Grounds this Writer could treat the Canon Law with

ſo

ſo much Bitterneſs and Contempt, as to call it *Page* 9. within one Line of the bottom, *the condemn'd Rule of the Canon Law*. The Canon Law has always been reſpected in every Catholic Country. Even here, it is treated with Reverence, and it is very well known, that a great deal of Deference is given to its Deciſions in ſome of our Tribunals. How then, and where, it muſt paſs under the Appellation of *the condemn'd Rule of Canon Law*, I do not apprehend. I am ſure in *France* (my Adverſary often appeals to that Authority which he thinks not ſo favourable to Eccleſiaſtical Power) where the Privileges of the *Gallican* Church, are as far extended, as they ever were in any Catholic Country, it is look'd upon as moſt ſacred. I will quote undeniable Authorities for what I advance, which will at the ſame Time ſhew him the Difference there is betwixt a Law's being binding as to Civil Effects, and its being binding in Conſcience. *Lewis* XIII. in his Edict of the Year 1629, had confirm'd the Fourth Article of the Edict, of the States of *France* aſſembled at *Blois*, under *Henry* III. in which, the Marriages of Children, without the Conſent of their Parents, were declar'd to be null and void in *France*, and the Eccleſiaſtical Judges were order'd to judge, in ſuch Caſes, according to the Tenor of the ſaid Decree. When the Edict of *Lewis* XIII. was publiſh'd, the Convocation (they call it the Aſſembly) of the *French* Clergy, then held at *Paris*, ſupplicated his Majeſty in the following Words. *We moſt humbly ſupplicate your Majeſty, that you will not diſdain to conſider, of how great Importance this Article is; it wanting to be expounded towards the clearing up two Difficulties. The firſt Difficulty is, that theſe Words,* " A Marriage validly or invalidly contracted, " *Shall not be underſtood otherways, than with Relation to the Civil Contract, and no ways with Relation to the ſpiritual Contract of Matrimony. The ſecond Difficulty; that the Eccleſiaſtics ſhall not be obliged to judge, according to the Articles of this Edict, and that of* Blois, *but according to the Holy Canons, and Eccleſiaſtical Decrees, which are the* ONLY RULE *and Meaſure of Eccleſiaſtical Judicature. For they neither ought, nor can receive from Laymen, a Juriſdiction in ſpiritual things, which they have received from God alone. Wherefore it is neceſſary to retrench from that Article theſe Words.* " And the Eccleſiaſtical Judges ſhall be obliged, in the like Matrimonial Caſes, to give Judgment according to the Tenor of this Article. "

HERE was a Conflict of Juriſdiction in a matter of Diſcipline, and a Contract, partly Spiritual, partly Temporal or Civil. The Civil Legiſlator, by a Statute Law, obliges the Eccleſiaſtical Judges to determine the Caſes in Queſtion, according to the Tenor of the Law. The Eccleſiaſtical Judges refuſe, and declare that the Canon Law and Eccleſiaſtical Decrees, are the ONLY RULE of their Deciſions. What Anſwer did the Civil Legiſlator make? Did he forbid them to judge according to *the condemn'd Rule of Canon Law*, and conform to the Statute Law? Nothing leſs. The King Commiſſion'd the High Chancellor, and ſome choſen Members of the Council of Conſcience, to anſwer the *Supplication* of the Clergy, and they gave their Anſwer, in Writing, in theſe Words. *The Remonſtrance of the Clergy, as to the firſt Difficulty was thus reſolved. Theſe Words,* " Marriages validly or invalidly contracted, " *are only to be underſtood relatively to the Civil Contract, by Laymen Judges. The other Difficulty alſo appear'd juſt and reaſonable.* In this Inſtance the Reader may ſee, *Firſt*, the Sentiments of the whole Kingdom of *France*, avow'd by both Tribunals, the Eccleſiaſtical and Secular, in regard to the Canon Law, even in a Point of Diſcipline; and that the Secular Legiſlature, maintain'd by the moſt abſolute Authority, far from obliging the Eccleſiaſtical Judges, to conform to the Statute Law in their Courts of Judicature, declared, that the Difficulty they made of conforming, was *juſt* and *reaſonable*. The Reader may ſee, *Secondly*, that a Law can be binding as to Civil Effects, tho' it is not Obligatory in Conſcience. For this Law, as to all Civil Effects, declares thoſe Marriages null and void; ſo that no Settlement could be made, the Children born in ſuch Marriage, were, in the Eye of the Law, Illegitimate, and could inherit nothing of their Parents: And the Parents, after ſuch Marriage had been, by the Secular Judge, declared null and void, were at Liberty to Marry again, and the Children, born of ſuch ſecond Marriage, were in the Eye of the Law, true and lawful Heirs. At the ſame time, the firſt Marriage ſubſiſted as to Conſcience, the Marriage would be declared valid in all the Eccleſiaſtical Tribunals, and the Parties could not, in Conſcience, avail themſelves of the Edict of *Blois*, and the Sentence of the Lay Judge, who conformably to that Edict, had declared the Marriage null and void; the Parties, I ſay, could not in Conſcience avail themſelves of ſuch Law to Marry again, but were in Conſcience bound to abide by their firſt Marriage. And as *Cabaſſutius* ſays, in his *Theory* and *Practice* of the Canon Law, *l.* 3. *c.* 26. this was the Opinion of the Biſhops, the Nobility and ableſt Magiſtrates of the Kingdom.

I will deſcend no farther to Particulars relating to this Point, which concerns the Eccleſiaſtical and Civil Legiſlative Power: what I have ſaid, ſufficiently clears the Canoniſts from uſurping an undue Power over the Civil or Common Laws of Temporal Princes; and all the Authorities my Adverſary alledges,

alledges, and we can admit of, ſay no more; wherefore it is unneceſſary to make any farther Remarks on a Point I have ſufficiently clear'd. And whereas, he ſays, in the firſt Paragraph of Page 12. that he only quotes the Author, he had juſt before cited, *To prove that by the Old Catholic Laws, things that were avow'd by all Men, to be purely and properly Temporal, did, by the Conceſſion of all, belong to the Temporal Juriſdiction, and were to be order'd by the Temporal Laws of the Realm, and not by the Laws of the Pope or by his Decretals.* I readily ſubſcribe to this Propoſition; ſo do all the Canoniſts and Divines that I have read; the contrary was never ſo much as inſinuated, in any Paper, I or my Friends have writ: So I think the trouble the Gentleman took, to prove what was deny'd by no Body, was an unneceſſary Labour.

BEFORE I come to the Third Part of theſe Remarks, in which I deſign a few Reflexions, on the general Scope and Tendency of my Adverſary's Argument; I cannot but take Notice of the Cenſure he has been pleaſed to lay, *Page* 12. and in the *Annotation* inſerted in it, on the Divines and Catholics in King *James* the Firſt's Reign, and on Father *Parſons* in particular, whom he taxes of Ignorance in the Laws of *England*, and Violence and Paſſion in his Proceedings. In regard to *Parſons*, ſeeing this is not a proper Place to turn Apologiſt, I will only ſay, that the Books he has written, are ſtanding Monuments of his Capacity in almoſt every ſort of Science, as his known Piety and Devotion ſuffice to wipe off any Blemiſh, that may be caſt on his Virtue. To which I will add, that the Opinion of the Lord Chief Juſtice *Raymond*, concerning *Parſons*'s Book againſt *Cook*, and his Knowledge in the Law was quite different from that given of him in this Paper I anſwer. I was aſſured by a Friend of mine, formerly of one of the Inn's of Court, in Preſence of a Gentleman of undoubted Character, who is ready to atteſt the Fact, that the ſaid Lord Chief Juſtice having borrow'd *Parſons*'s Book againſt *Cook*, and returning it about two Months afterwards; being ask'd, by the Gentleman, who lent it, his Opinion of it, anſwer'd, *he thought the Divine had clearly the better of the Lawyer.* I muſt be a little more prolix in my Juſtification of the Divines and Catholics of thoſe Days. Amongſt other things he ſays of them in the Annotation..... *So true it is, that the Laity in this Country, of that unhappy Body, have ſuffer'd much more, from what has fallen, either in the Heat of Diſputation, or in the Wantonneſs of Speculation, unadviſedly from the Pens of their Eccleſiaſtics, than from their own Behaviour, or any of thoſe Maxims, which they did themſelves, from their own Hearts, really and ſoberly avow and maintain.*

I will not ſay this Writer meant, that all the Catholics in thoſe Days, were Fools and Hypocrites; but I will ſay, that, if what he aſſerts is true, they were all Fools and Hypocrites. For it follows clearly, that they did not ſuffer on Account of their Religion, but for Maxims which they did not themſelves, *from their own Hearts, really and ſoberly avow and maintain.* I ſuppoſe he will allow they did *from their Hearts really and ſoberly avow and maintain* every Point of their Religion; conſequently, they did not ſuffer for their Religion, or own Behaviour with regard to their Religion, but for the Sayings and Writings of others. They muſt have been very unwiſe, unwiſe to the laſt Degree, not openly to diſavow Maxims, which they did not in their own Hearts believe. For in ſuch Caſe, the Gentleman won't ſuppoſe the Legiſlature ſo unjuſt, as to make them ſuffer for Maxims they diſavow'd: Or they muſt have maintain'd as Articles of Religion (and then they were Hypocrites) Maxims, which they did not, *from their Hearts, really and ſoberly avow and maintain.* But let us ſee what were theſe Maxims, that either fell in the Heat of Diſputation, or in the Wantonneſs of Speculation, from their Eccleſiaſtics, which were the Occaſion of the Catholics ſuffering. He leads us into his Meaning in his *Annotation*, Page 24. where he ſays. *If the Divines that had the Guidance of the Conſciences of the Poor Catholics in the Time of King* James *the Firſt, would have permitted them to have given the King, ſome ſuch Aſſurance as this of their hearty Deteſtation of the King depoſing Power, the Two-thirds of their Eſtates would not in all Probability, have been made liable to Seizure and Confiſcation, as it was in that Reign..... But theſe Men of Zeal thought it much more eligible, to let their Followers forfeit their Eſtates, than to run the Risk of loſing one jot of their own Power: A ſad and lamentable Miſtake,* &c. I am ſorry he has here launch'd out of his Depth, and condemn'd, with one Stroke of his Pen, the Catholic Divines of thoſe Days of *a ſad and lamentable Miſtake*, in not permitting the Catholics to give the King *ſome ſuch Aſſurance as this, of their hearty Deteſtation of the King depoſing Power.* I believe the Catholics, and the Generality of the Divines in thoſe Days, here in *England*, were as far from maintaining this Doctrine of King depoſing Power, as the Divines, of this and any other Country now are; ſo that it is an Injuſtice and Calumny in the Writer, to give as the Opinion of the Generality of the Catholic Divines of *England*, in thoſe Days, what might have been the private Opinion of at moſt two or three. Why then, will he ſay, did they not permit the Catholics to give the King, *ſome ſuch Aſſurance as this of their hearty Deteſtation of the King depoſing Power?*

The

The Anſwer is obvious, and he could not have wanted one, had he made the leaſt Reflexion on the Nature of the *Aſſurance* which was exacted of them.

He will find it in the Oath of Allegiance, which was exacted by King *James* the Firſt, an Oath of which no one, who has dipp'd into the Hiſtory of thoſe Times, can be Ignorant, there having been ſo many elaborate Treatiſes writ againſt it and for it, and the King himſelf not diſdaining to appear amongſt the Apologiſts of the ſaid Oath. In that Oath, amongſt a great many things, relatively to which, every Loyal Subject is bound in Conſcience to ſwear Allegiance to his Sovereign, are ſome things which the Catholics thought they could not ſwear to in Conſcience, and, conſequently to that Perſuaſion, they could not take the Oath without being Perjured. Amongſt other Words of the Oath are theſe, *I ſwear and proteſt from the bottom of my Heart, that I deteſt and abjure as impious and* HERETICAL *that deteſtable Propoſition and Doctrine that Kings excommunicated or depoſed by the Pope, can be depoſed*, &c. Now the Catholics, who might have held King depoſing Doctrine, as deteſtable, as the Gentleman himſelf does, could not ſwear, that they from the bottom of their Hearts, believed it to be *Heretical*. Becauſe Catholics do not think a Doctrine is *Heretical*, till it has been condemn'd by the Church, and they knew that this Doctrine, howſoever much they might deteſt it, had never been condemn'd by the Church: Conſequently they could not take ſuch an Oath; and their Divines, in diſſuading them from taking it, ſhould not have been accuſed of a *ſad and lamentable Miſtake*. I ſuppoſe he did not know, that one of the moſt Guilty of this *ſad and lamentable Miſtake*, was *Paul* the Fifth, who in his Brief addreſs'd to the *Engliſh* Catholics and dated the twenty ſecond of *September* 1606, exhorts them to ſuffer rather Death itſelf, than take that Oath, which he ſays, they cannot take without Detriment to the Catholic Faith, and their eternal Salvation. But leſt this Authority ſhould not, with ſome, be perſuaſive enough, to vindicate our Catholic Divines, of theſe Days, from the Aſperſion of having fallen into *a ſad and lamentable Miſtake*, in an Affair of that Importance, I will in a ſuccinct Narrative, ſhew what were the Sentiments of *France* in theſe Times in regard to this Matter.

In the Aſſembly of the States General of *France*, open'd at *Paris*, *October* the twenty ſeventh 1614, the third State in their Remonſtrances, which they began to draw up on the fifteenth of *December*, inſerted an Article relating to the Sovereign Power of the King, and the Preſervation of his Sacred Perſon. In this Article, amongſt other things, it was decreed, that it ſhould be look'd upon as a fundamental Law of the Nation, and all Orders and Degrees of the Kingdom ſhould be obliged to ſwear and ſign, that the King depoſing Doctrine is impious, deteſtable and againſt Truth. The Nobility, before they were well appriſed of the Importance of the Matter, ſeem'd inclined to join with the third State, in ſupplicating the King, to have the ſaid Article paſs'd as a fundamental Law of the Kingdom; but underſtanding that the Eccleſiaſtical Chamber, which was then compoſed of a hundred and thirty two Deputies having at their Head the moſt diſtinguiſh'd Cardinals and Prelates of the Kingdom, would never ſubſcribe to it, they reſolved to ſtand by the Sentiment of the Clergy in this Affair. Upon which Cardinal *du Peron*, accompanied by the Archbiſhops of *Aix* and *Lyon*'s, and ſome other Prelates, went to harangue them the laſt Day of the Year 1614. He told them, amongſt other things, that the ſaid Article could not but be extreamly Prejudicial to the public Tranquillity, and Cauſe a deplorable Schiſm; that it appertain'd to none but *Councils* to decide the like Queſtions, that the pretended fundamental Law, contain'd in that Article, had been ſome few Years before fabricated at *Saumur* and in *England*; and that the Members of the Eccleſiaſtical Chamber WOULD RATHER SUFFER DEATH, than take the Oath which was propoſed..... The Members of this Eccleſiaſtical Chamber, muſt certainly have fallen into a *ſad and lamentable Miſtake*, and drawn all the Nobility into the ſame..... The Succeſs the Cardinal had with the Nobility, gave him hopes of the like Succeſs with the Members of the third State. He went to them on the ſecond of *January* 1615, accompanied by great Numbers of the Prelates and Nobility; and in a moſt eloquent Harangue, having reduced the Subſtance of the Article to theſe three Heads: *Firſt*, to the ſecuring the Sacred Perſon of Kings againſt the Enthuſiaſtical Fury of Aſſaſſines: *Secondly*, to the Dignity and temporal Sovereignty of Kings, and *Thirdly*, to the depoſing Power; he declared, that as for the two firſt Points there was no Diſpute; it being certain from Holy Scripture, that it is a deteſtable Crime to lift one's Hand againſt the Anointed of the Lord; and the Dignity and temporal Sovereignty of Kings being inconteſtable. The Difficulty conſiſted in the third Point of the depoſing Power, concerning which the Cardinal ſaid, that the Article in Queſtion could not be admitted without the greateſt Inconveniences: One was the inevitable Danger of a Schiſm, by declaring a Doctrine impious and abominable, which was taught, under the Eyes of the Church, in ſome other Kingdoms, and thereby attributing to the Laymen, the Right of judging whether a Propoſition is conformable, or not, to the Word of God,

God, which Right appertains only to the Church. Tho' the Cardinal did not in this Harangue declare his own Opinion, as to the Truth or Falſity of the depoſing Doctrine, his Words apparently implied, that he judged it to be falſe; but he only inſiſted, to ſhew that there is a great deal of Difference between believing a Doctrine to be falſe, and believing the oppoſite ſide of the Queſtion has ſuch a Degree of Certainty, that the other cannot be held without erring in a Matter of Faith, or ſuch a Certainty as is ſufficient to be aſſerted by a ſolemn Oath; for an Oath, not to be Raſh, muſt ſuppoſe a Degree of Certainty which puts the thing ſworn to beyond all Doubt. Whence follow'd, that if it is not evident in Scripture, the Traditions or expreſs Definitions of the Church, that ſuch Doctrine is impious, deteſtable and Heretical, no Man can lawfully ſwear it to be ſo, with howſoever much Probability he may judge ſuch Doctrine to be impious, deteſtable and Heretical. This was the Motive of the Cardinal for oppoſing, together with the Clergy and Nobility, the taking the ſaid Oath. In Conſequence to theſe Reaſons, and the Remonſtrances made to the King by the Clergy and Nobility, his Majeſty, on the nineteenth of *January*, order'd the third States to leave that Article entirely out of their Remonſtrances, which Order they conform'd to, and ſo ended this Affair. From which the Gentleman who has tax'd the *Engliſh* Catholic Divines in King *James* the Firſt's Reign, of falling into a *ſad and lamentable Miſtake*, ſuch as gave Occaſion to the moſt ſevere Laws againſt Catholics, and this thinking it much more *eligible*, *to let their Followers forfeit their Eſtates*, *than to run the Risk of loſing one jot of their Power*, &c. was *a ſad and lamentable Miſtake*; into which beſides *Paul* V. were fallen, the Clergy, Nobility, and at laſt all the States, and King himſelf of *France*; all having yielded to the Reaſons the Clergy alledged, why ſuch an Oath could not be, in Conſcience, taken. Such was the Aſſurance, *James* I. required, of the Catholics deteſting the Doctrine of King depoſing Power, which Doctrine tho' it was maintain'd but by very few, could not by any, be condemn'd as Heretical, under the Sanction of a ſolemn Oath.

PART III.

I come to the Third Part of theſe Remarks, which regards the general Scope of the Paper I anſwer, and I ſuppoſe the main Drift of it, which is to ſhew, that, in Catholic Times, Religious were, by the Common Law of this Country, incapacitated to inherit any thing from their deceaſed Relations. He endeavours to make this good, from Page 14. to Page 19. by quoting Caſes and Precedents, and the Authorities of Men learned in the Law, in Favour of his Opinion, to wit, that no Religious Profeſs'd could, according to the Old Laws of *England*, claim any thing, or have an Action in his own Name and Right. I ſhall be very ſhort in this Part of my Remarks, leaving to Gentlemen of the Profeſſion, to make ſuitable and neceſſary Reflexions on the Point of Law maintain'd in that Writing. I am aſſured, by Gentlemen equally knowing in the Law, that the Point is far from being ſo clear as pretended; and had not a certain Conference been declined, this might have been clear'd up, and he might have received an Anſwer to the Caſes cited. I will only make this Remark in general, having ſpoke of it before, that, as far as I can ſee, the Caſes, Precedents and Authorities alledged, prove no more, than that a Profeſs'd Religious, in Particular, could not claim any thing in his own Right and Name, which was never deny'd; on the contrary, the ſame is taught by all Canoniſts and Divines, in as expreſs Terms as it is deliver'd in any of the Authorities quoted out of our Lawyers. Therefore when *Page* 14. Parag: *And indeed*, he ſays, *it cannot but be complain'd of*, *as one of the greateſt Hardſhips*, *that we ſhould be obliged to prove the Truth of ſome of the cleareſt Grounds and Principles in the Common Law of* England, *as the Gentleman in his Anſwer has called upon us to do*, &c. When I ſay, he makes this Complaint, he muſt complain of himſelf; for he was never called upon to prove, that a Profeſs'd Religious could not according to the Old Laws of *England*, claim any thing for his own Uſe, the Canoniſts and Divines being conſentient with the Laws of *England* in this Point, which was alſo expreſly granted in the very Paper in which he ſays he is called upon to make ſuch Proof: But he was expreſly call'd upon, to ſhew out of the Old Laws of *England* that a Religious Man, jointly with his Superior, or a Religious Body, could not maintain an Action in Virtue of a Right they had from their Profeſs'd Members. He could not mean his anſwering this Call, when he ſays it was a Call, *to prove the Truth of ſome of the cleareſt Grounds and Principles in the Common Law of* England, becauſe he himſelf, as I have already ſaid, grants *Page* 19. that our antient Laws are *abſolutely ſilent* as to this Point. And conſequently he muſt there ſpeak of a Call, to prove that a Religious Man could not, for his own Uſe, make any claim: To prove which he was no where call'd upon. Wherefore his Complaint, *of one of the greateſt Hardſhips that he ſhould be obliged to prove*, &c. Muſt be againſt himſelf: It was quite a voluntary, inutile Labour of his own, by which, indeed, the unwary may be miſled,

miſled, to think the antient Laws of *England* were contrary to the Pretenſions of the Religious, but which, far from touching the Difficulty of the Queſtion, leaves it quite undecided as to the antient Laws of *England*, or rather grants no antient Laws of *England* were contrary to them, and conſequently they remain in Poſſeſſion of the Right they have by the Law of God and Nature, to conſecrate themſelves and what belongs to them, to the Service of God.

Page 19. He endeavours to make ſome Inferences from the Old Law, out of which he would conclude, that as a Profeſs'd Religious could not claim in his own Right, ſo his Body or Community could not claim, or acquire through his Right. This he endeavours to prove negatively, from the Silence of our Lawyers; he cites Lord *Cook*, who is ſilent as to this Way or Method of Acquiſition, and from thence concludes, that there was no ſuch Method of Acquiſition. Suppoſing this way of arguing to have more Force than any one will allow it, the moſt he can infer is, that for the aforeſaid Reaſon of the Silence of our Laws as to this way of Acquiſition, he, as a Lawyer, draws this Conſequence, that there was no ſuch way of Acquiſition known in our antient Laws; but will this Concluſion of his have Force of Law, and ſuch Force as to give him room to *complain of, as one of the greateſt Hardſhips, that he ſhould be obliged to prove the Truth of ſome of the cleareſt Grounds and Principles in the Common Law of* England. Beſides, that way of arguing is quite fallacious, and would conclude from an Author's Silence as to any Point, with the ſame force as if he had been poſitive on one ſide of the Queſtion; which, I believe, no Body will grant. But he endeavours to enforce this Surmiſe of his by ſome poſitive Law; and *Firſt*, Page 19. ſays, *I have certainly proved, that it has already been determin'd, by ſhewing you the Caſe where it is decided poſitively, that none but the Abbot can take to the uſe of the Houſe.* If this poſitive Aſſertion proves certainly, that the Abbot or the Community cannot acquire in Right of their Religious, then the Aſſertions of all the Divines and Canoniſts, who poſitively affirm that Religious Houſes and Monaſteries can acquire through the Right of their Religious, prove certainly, that they cannot acquire through the ſaid Right. This is evident. For *the Caſe where it is poſitively decided, that none but the Abbot can take for the uſe of the Houſe*, ſuppoſes that the Abbot can take for the uſe of the Houſe. The Law does not ſuppoſe, that the Abbot takes as he may be conſider'd in the Capacity of a Profeſs'd Religious in particular, for as ſuch he can no more take, than any other private Religious, but the Law ſuppoſes the Abbot, as he repreſents the Community, and in the Name of the Community, can take. Conſequently, to infer from this poſitive Deciſion, the Abbot as repreſenting the Community can take: To infer, I ſay, it is clearly decided, that the Abbot and Community cannot take or acquire through their Religious, concludes directly in this manner; they can take and acquire for the Benefit of the Houſe, therefore they cannot take and acquire for the Benefit of the Houſe; or if you will have it in ſtricter form, it concludes thus: The Abbot and Community can take for the Benefit of the Houſe; but when they acquire through the Right of their Religious, they take for the Benefit of the Houſe; therefore they cannot acquire through the Right of their Religious. A pretty Conſequence indeed.

Secondly, In the above-cited Page he quotes Sir *Thomas Craig*, in his Treatiſe on the Feudal *Scotch* Laws. To which I anſwer, *Firſt*, that ſuppoſing the *Scotch* Laws had been contrary to this Right the Religious pretend, it could only affect the Religious of *Scotland*, and would ſerve nothing to the preſent Purpoſe of that Writer, which he ſays, was *to prove the Truth of ſome of the cleareſt Grounds and Principles in the Common Law of* England. I anſwer, *Secondly*, that what he cites out of Sir *Thomas Craig*, is ſo far from prejudicing the Cauſe I have in Hand, that on the contrary, it makes for it. I quote him after the Gentleman whom I anſwer. *Whether a* Monk *may, by Old Feudal Law, acquire a Feud or a Fief, for the Benefit of his Houſe, upon the Rule*, Quidquid Monachus acquirit, acquirit Monaſterio, *&c.* Note here, *Firſt*, he grants according to this Rule of Law, *Exceptio firmat Regulam in non exceptis*, that generally ſpeaking, a *Monk* may acquire in other Caſes for the Benefit of his Houſe. *Secondly*, he grants this to be a Rule, *Quidquid Monachus acquirit, acquirit Monaſterio.* Conſequently, a *Monk* could ſometimes acquire for his Monaſtery, for there cannot be a Rule *de Subjecto non ſupponente*, as Philoſophers term it. And I will infer by the Gentleman's way of arguing, that this was a Rule not only in *Scotland* but in *England*. *In which Treatiſe*, ſays he, ſpeaking of *Craig*, *he generally takes Notice, how far and in what Caſes, the Feudal* Scotch *Law varies from the Law of* England. From whence certainly he intended to conclude, that, as to the Caſe cited out of *Craig*, the *Engliſh* Law did not vary from the *Scotch* Law. He goes on citing *Craig* thus. *Some, ſays he, hold that if the Lord at the Time of making the grant of the Feud, knows the Grantee to be really a* Monk, *then from the ſtrong Preſumption there is, that the Grantee would have it ſo, the Monaſtery ſhall acquire*, THROUGH THE MONK. Mark there again the Opinion of thoſe Days, that a Monaſtery, in Caſes not excepted, could acquire THROUGH THE MONK, that is in Right of him. Then *Craig*, as he cites him, having quoted *Obertus Lib. 2. Feudor cap. 4.* for the

Opinion that a *Monk* may, for the Benefit of himſelf or of his Houſe, acquire the *feudum novum* (but not the Paternal or Hereditary Feud) if the Grantor knew him to be a *Monk*; he adds, *that the learned differ amongſt themſelves as to theſe Points, but as to the Practice of* Scotland, *it differs from the uſage of thoſe Places where the Feudal Law prevails.* In theſe Words, he grants where the *Feudal* Law prevails, a *Monk* could in ſome Caſes acquire a Feud or Fief for the Benefit of his Monaſtery. *Laſtly*, he concludes with theſe Words, which for the Importance of them are ſet down both in *Engliſh* and *Latin*. *For with us*, ſays he, *a* Monk *is not only held to be in the ſame ſort of State as a Bondman, but is alſo ſaid to be dead to the World, he is not capable either of a new Feud, or of a Paternal one.* The Gentleman's Remark, upon this Quotation, is as follows. *As there was always a very ſtrict affinity, between the Laws of* Scotland, *and thoſe of this Realm, we do not doubt but that this will be thought a very great Authority.* I hope it will, but it is evidently on my ſide of the Queſtion. For *Firſt*, I argue thus, Sir *Thomas Craig* ſhews that, according to the *Scotch* Law, a *Monk* could not acquire for the Benefit of his Monaſtery either a new Feud or a Paternal Feud, therefore according to that Axiom of Law, *Exceptio firmat Regulam in Contrarium*, and that other *Reg.* 34. *Generi per ſpeciem derogatur:* I may lawfully infer, that in other Caſes which are not Feudal, a *Monk* could acquire for the Benefit of his Monaſtery. *Secondly*, if by the *Scotch* Laws a *Monk* could in no Caſe acquire for the Benefit of his Monaſtery, Sir *Thomas Craig*'s Argument ſhould have been thus; a *Monk* can in no Caſe acquire for the Benefit of his Monaſtery, therefore much leſs in this Caſe of a Feud or Fief, where there is a third Perſon, whoſe Intereſt would be prejudiced, if he acquired a Feud or Fief for the Benefit of his Monaſtery. This was the true and natural way of arguing, if according to the *Scotch* Laws a *Monk* could not, in other Caſes, acquire for the Benefit of his Monaſtery. From whence we muſt conclude there were no ſuch Laws. *And as there was always a very ſtrict Affinity between the Laws of* Scotland *and thoſe of this Realm, we do not doubt, but that this will be thought a very great Authority.* Tho' I believe he is miſtaken as to this Point, for there is no more Affinity betwixt our Common Law and the *Scotch* Common Law, than betwixt our Common Law and the Common Law of *France*; the *Scotch* follow the Civil Law.

He may probably ſay, that the Reaſon alledged by *Craig*, why the *Monk*, according to the Laws of *Scotland*, is not capable either of a new Feud or of a Paternal one, to wit, becauſe *he is ſaid to be dead to the World*, extends likewiſe to all other Caſes. I anſwer, *Firſt*, that tho' there ſhould be the ſame Reaſon for all other Caſes, that does not make it Law in all other Caſes, as it is clear and manifeſt. For let the Reaſons be never ſo much the ſame, if the Legiſlature could make a Law for ſuch Reaſon, and did not, there certainly is no Law, according to a common Axiom of the Law. *Regul. Jur.* 57. *Contra eum qui legem dicere potuit apertius, eſt intepretatio facienda.* I anſwer, *Secondly*, that the Reaſon is far from being the ſame, in all other Caſes of a *Monk*'s acquiring for his Monaſtery. For tho' he is dead to the World, as to Perſonal worldly Services, and ſo is not capable of a Feud, becauſe every *Feudal Tenure is a Service, and that the* Monk *being a Bondman, is therefore unfit for ſuch Service, as not being able to do the Duties of a Vaſſal*, as *Craig* ſays; it cannot follow that he is not capable of acquiring for the Benefit of his Monaſtery, in Caſes where there are no Duties of a Vaſſal to perform, or none ſuch as are inconſiſtent with the State of a Religious Life. The Canoniſts and Divines, as well as Sir *Thomas Craig*, teach that a Profeſs'd Religious is not capable of a Feud, at leaſt Paternal, and as to this Point are all conſentient; tho' at the ſame time they teach that a Religious can acquire for a Monaſtery, and a Monaſtery ſucceed in Right of their Religious. Even thoſe Canoniſts and Divines, on whom he has made ſo many Reflexions, agree with *Craig*, at leaſt as to the Point of a Paternal Feud, and the Reaſons they alledge are the ſame, *viz.* becauſe a Profeſs'd Religious is not able to do the Duties of a Vaſſal: *Layman, l.* 3. *de Juſt. Tract.* 4. *cap.* 24. ſays, *The foreſaid* (Religious) *Perſons are not capable of a Feud. It is ſo taught.* Lib. 2. Feud. Tit. 26. *and the Reaſon is alledged in the ſaid Book*, Tit. 21. viz. *that he ceaſes to be a Soldier of this World, who is made a Soldier of Chriſt, and the Benefit cannot accrue to him, who cannot do the Duty.* And *Vitus Pichler, l.* 3. *Tit.* 20. *de feudis*, ſays, that as to Paternal Feuds, and ſuch as have annex'd to them any Vaſſalage, which ought not to be performed by a Religious Man, they certainly cannot be acquired by a Religious Man, nor come by Succeſſion to his Monaſtery through his Right. *Leſſius* grants the ſame *de Juſt. & Jure. l.* 21. *cap.* 41. *Dub.* 10. Tho' theſe Authors, and moſt other Canoniſts, as *Obertus* cited by *Craig*, are of Opinion, that a Monaſtery can ſucceed in Right of its Religious, to a Feud, where the Feudal Tenure is not a Service which ought not to be perform'd by a Religious Man. See *Navarr. Comment.* 2. *de Regul. n.* 55. This is enough to ſhew that there is not the ſame Reaſon, for a Religious Profeſs'd not being capable of acquiring a Fief for the Benefit of his Monaſtery, and his not being capable of acquiring in other Caſes. For not only theſe Authors, who teach he is not

capable

capable of acquiring a Feud, teach that he is capable of acquiring, for his Monaſtery, by Succeſſion in other Caſes, but moreover, as I ſaid before, *Craig* manifeſtly ſuppoſes him capable of acquiring for the Benefit of his Monaſtery, in other Caſes.

Some one will perchance think, that I have here exceeded the Limits I had preſcribed to myſelf, and made ſome Remarks on a Point of the Law, which I ſhould have left to the Lawyers. I will deſire them to reflect that the Feudal Laws are a Subject on which the Canoniſts write, and which thoſe Divines treat of who have writ Treatiſes *de Juſtitia & Jure*. As for the Common Law and Statute Law of the Realm, I pretend not to make any Remarks upon them. They are out of my Sphere; which makes me wonder the Gentleman, whom I anſwer, ſhould ſhew his Surpriſe at my not entring farther into the Point of Law, and throw a Sneer upon me for not making uſe of Law Terms. In the Paper mark'd by him N° 2. without entring any farther into the Point of Law, the Caſe was ſufficiently anſwer'd as to the Point of Conſcience. There was no ſolid Difficulty, in the Paper N° 1. which was not there ſolved: And tho' he ſeems to wonder I would not take the Pains to anſwer him more amply, I am ſtill ſatisfied, and I believe all impartial Judges will, that even that Anſwer was ſufficient. It was therefore quite unneceſſary I ſhould commence Lawyer, and take uſeleſs, needleſs Pains in ſearching the year Books, out of which after all, he, with ſo much Erudition and Labour, has found nothing in his Favour, and been forced to own, in regard to the Principal Point of the Controverſy, that our Laws are *abſolutely ſilent*. I am told they are not quite ſo ſilent, and that ſome Gentlemen of the Profeſſion, will make them ſpeak in our Favour. But, no more on that Subject. I remember the ſaying, *Ne Sutor ultra Crepidam*. Had the Erudite Gentleman made that Proverb his Rule, he would not have launch'd into ſome unguarded Propoſitions, in Matters which he ſhould have left to the Divines, nor would he have taken upon him the Liberty to cenſure ſome of the moſt able amongſt them, whom in all appearance he knows only by their Names, or the Character which has been ſuggeſted to him out of *Paſchal*. What would he have ſaid to me, ſhould I have pretended to cenſure any of his learned Lawyers; and becauſe Lord Chief Juſtice *Cook* has carried ſome Points much farther than he himſelf will allow of, rejected him with ſome of the Cenſures laid upon him, by the *Violent* and *Paſſionate Parſons*, as he calls him. Have I not therefore Reaſon to expoſtulate with him when, Page 17. he ſticks not to ſay. *My Surprize is to find, by a ſubſequent Diſcourſe, that any Gentleman who aſpired to the Character of being of ſound Knowledge in Canon Law and Divinity, ſhould at this Time o'day be ſo unguarded, as to publiſh to the World that he fetches the Syſtem of his Caſuiſtry------his Rules for the Guidance of an upright Conſcience, from the Treatiſes of ſuch Divines as* Lugo, Leſſius, Layman *and* Sanches, *ſome of whom I find named in Company with a Set of Caſuiſts, that are too deſervedly, I fear, tax'd with maintaining ſuch looſe Opinions, as are deſtructive of all true Piety and Morality*. Here is a Propoſition on which every learned Reader will, I believe, without my ſuggeſting them, make ſufficient Reflexions. He has at once incroach'd upon the Divines, as to the Point of Doctrine, and cenſured their Characters, as to their Piety and Morality. He is ſurpriſed I ſhould take, from thoſe great and learned Men, the Rules for the Guidance of an upright Conſcience; he would certainly have me take thoſe Rules from the Law Books, which he wonders I was not tempted to look into on this Occaſion, ſo for the future he will give us the Rules laid down by Lord Chief Juſtice *Cook*, and ſome others of the ſame Perſuaſion, for the *Guidance of an upright Conſcience*, whilſt *Lugo*, *Layman*, *Leſſius* and *Sanches* ſtand condemn'd, at his Tribunal, by the Verdict of *Paſchal*. I have told him before, that notwithſtanding the Calumnies of that infamous Book, which was by both Powers, Eccleſiaſtical and Secular condemn'd to the Flames, thoſe learned Men, whom in the Words I have cited, he condemns *for maintaining ſuch looſe Opinions as are deſtructive of all true Piety and Morality*, are, notwithſtanding all *Paſchal*'s Calumnies, read with Eſteem in every Catholic Univerſity, and will not loſe one Jot of the Authority they have amongſt Divines, on Account of this unguarded Cenſure of the Lawyer.

PART IV.

I come to the Fourth Part of theſe Remarks, in which I ſhall briefly make ſome Reflexions on what he has writ from *Page* 17. to *Page* 26. He makes in thoſe Pages Objections, which he afterwards calls mine, adapted to Anſwers, which he may truly call his.

As for the Firſt Objection, which was to ſhew, that a Profeſs'd Religious was not dead in the Eye of the Law, as to all Civil Effects, ſeeing he could be Executor or Adminiſtrator; his Anſwer, extended through almoſt two long Pages, ſhews no more than what he had proved before; than what

we had always granted, to wit, that a Profeſs'd Religious cannot claim in his own Name and Right; ſo I take no farther Notice of it.

THE Second Objection I had made was, that tho' a Religious Man cannot claim in his own Name and Right, the Body of which he is a Member, can acquire through him and in his Right. I have already, Page 17. made my Remarks on his Anſwer to this Objection, and ſhew'd clearly, that far from bringing any Satisfactory Anſwer, he has given it up as to the Principal Point, and that Sir *Thomas Craig*, whom he quotes, is clearly againſt him.

THE Third Objection regards neither directly nor indirectly the Cauſe I defend: So I will ſay nothing to the Anſwer.

THE Fourth Objection is, that ſuppoſing there had been, in Catholic Times, Laws which were then binding in regard to Religious, thoſe Laws were diſuſed before the Religious in Queſtion were a Body of Religious, and conſequently could have no binding Effect in their Regard.

HE anſwers, that *it is not fair to ſuppoſe a Fact, which all but ignorant People muſt know to be the Reverſe of what is pretended in this Objection:* And a little after. *In all other Inſtances, it has always been held amongſt Catholics, that entring into Religion and being Profeſs'd, was a Civil Death; and that it gave Right to the next in Succeſſion, juſt as if the Profeſs'd Perſon had been naturally dead.* He inſtances a little after in the Caſe of Sir *Laurence And----ton*, whom by Miſtake he calls *And----ſon* of the Lord *Ph----- G-----d*, &c. The Remark I make on this Anſwer is, that notwithſtanding the poſitive Aſſertion, *that all but ignorant People, muſt know the ſuppoſed Fact to be the Reverſe of what is pretended in the Objection*, the Ignorance, in a Fact ſo notorious, muſt lie on the other ſide of the Queſtion; and I aſſert, that it is abſolutely falſe that the Practice of the Catholics in *England* has been, to look upon the Profeſſion of a Religious as a Civil Death, in ſuch ſort as to give a Right to the next in Succeſſion, juſt as if the Profeſs'd Perſon had been naturally dead. The Practice amongſt the Catholics in *England*, has always been, ſince the Reformation, that if a Perſon poſſeſs'd of an Eſtate, Profeſſes in a Religious Body, antecedently to his Profeſſion he makes ſome Settlement, by which he makes over his Eſtate, either to his ſucceeding Brother or next of Kin, unleſs for ſome urgent Reaſons he thinks proper otherways to diſpoſe of it, and then the Eſtate is poſſeſs'd according to ſuch Settlement. Moreover, the Practice has always been amongſt Catholics, ſince the Reformation, that if a ſecond Brother is a Profeſs'd Religious, having antecedently made no Will nor Settlement, when his elder Brother dies Inteſtate, the Eſtate does not fall to the third Brother, but through a Settlement to be made, with the Conſent of his Superiors, on that third Brother; and this is look'd upon as a Practice ſo conſtant amongſt Catholics, that no one has ever diſputed the Right the ſecond Brother would have in ſuch Caſe, of reſerving to himſelf a Penſion or Annuity, out of the ſaid Eſtate upon ſuch Settlement. The Caſe of Sir *Laurence And----ton*, and that of Lord *Ph----- G-----d* were ſuch; the younger Brother in one Inſtance, and the Siſter in the other, came in, in Virtue of Settlements antecedently made, when they were at Liberty to diſpoſe of what they had, or made conſequently to their Profeſſion, with Leave of their Superiors. The Fact is ſo conſtant, and the Practice ſo certain amongſt the Catholics of this Realm, that I am ſurpriſed the contrary could be by any Body affirm'd in ſo peremptory a manner. And as for what is ſaid of Mr. -------- that he was paſſed over in all the Family Concerns, it is ſo far from being true, that I have often heard him ſay, that he was obliged to ſign in many Tranſactions, and always ſign'd *Sh*-------- whilſt his Brother ſign'd the Sirname of that Noble Family.

IN the Anſwer to the ſame Objection he undertakes to conſider, whether thoſe Laws, which he ſuppoſes formerly brought the Incapacity on Religious, can affect ſuch Religious Bodies as were not then in being when thoſe Laws were in force. He ſays they would, but proves nothing of it, unleſs this Argument ought to be look'd upon as a Proof; thoſe Laws affected all the Religious Orders then in being, therefore they would have affected, and can now, after the Abrogation of thoſe Laws, affect a Religious Order which was not then in being. The Conſequence is abſolutely falſe: For ſuppoſe the Religious Order in Queſtion had been then exiſting and received in *England*, it would probably have been received, as it has been received in almoſt all Catholic Countries, relatively to its own Conſtitutions, which in ſeveral very eſſential Points, vary from other Religious Orders; at leaſt it would have been directed by its own Conſtitutions, unleſs it had been received under Reſtraints and Limitations, as it was in *France* in Time of *Henry* the Fourth, or unleſs the Legiſlative Power had extended the Common Law of *England* to their Caſes. Nothing of this has been done, conſequently it is not in the Power of any howſoever learned Lawyer, to lay them under the ſaid Incapacities or Reſtraints.

THE

THE Fifth Objection was never made by any one of my ſide of the Queſtion. He has himſelf dreſs'd it up, to make his Adverſary talk with as little Conſequence as Religion, and to give himſelf an Opportunity of making ſome very undeſerved Reflexions, on me, and the Cauſe I defend. The Purport of this Objection is contain'd in the Fourth and Fifth of the Propoſitions, to which he pretends to reduce the Subſtance of the Paper mark'd by him N° 2. In Anſwer to the Objection, and the Reflexions he makes upon it, I will refer my Reader to what I have already ſaid on that Subject, Page 11. and to the Words I there quoted out of the Writing on which I make theſe Remarks, and which I will here again, retort upon my Adverſary aſſuring him, that this fifth Objection and his Anſwer to it, are *very far from deſerving to be treated in a grave way, and to take Notice of it in any other way, might lead one from that Rule of good Manners which ought always to be obſerved towards that Gentleman.* I will only make this farther Reflection on the Anſwer to the Objection, that he never heſitates to make me ſay what I do not ſay, if he can, by putting Words into my Mouth, find an Opportunity of aſperſing the Cauſe I defend, or diſplaying the Learning with which he is ſo eminently qualified. For beſides the Subſtance of the Objection which is, almoſt in every Sentence, quite the Reverſe of what I had aſſerted, as I have ſhewn in the Remarks on the Fourth and Fifth Propoſition; he makes me ſay here, that the Statute Laws made in Time of *Henry* VIII. diſabled the Bodies from taking in their corporate Capacity: and then he very learnedly ſhews and prolixly, that there is no ſuch thing as any Act of Parliament, that abſolutely diſables the Regulars from taking as a Body. I never ſaid there was any ſuch Statute or Act of Parliament. I ſaid indeed in another Paper, *that by the Law for the Diſſolution of Monaſteries, it was taken care with a Witneſs, and to all Intents and Purpoſes,* that no Religious Bodies or Communities ſhould be capable of ſucceeding by Will or from the Inteſtate, is this to ſay there was an expreſs Statute or Act of Parliament that diſabled the Bodies from taking in their corporate Capacity? Nothing leſs; the Inference I made was plain and obvious to every Body who would but open his Eyes, and it was this; the Inability of Religious to acquire in their corporate Capacity, was a neceſſary Conſequence of the Statute, by which Religious Communities being diſſolved, they could no longer ſubſiſt in their corporate Capacity: and this Conſequence being immediate and evident, I might juſtly ſay, *That by the Law for the Diſſolution of Monaſteries, it was taken care with a Witneſs, and to all Intents and Purpoſes,* &c.

THE Sixth Objection, as to the Subſtance of it, and as the Gentleman has fitted it for the Anſwer he deſign'd to make, is entirely his own, I never made it. In another Manuſcript Paper, I ſaid, *I inſiſt upon ſeeing ſome clear Law, by which not only Religious in particular, but even ſuch Religious Houſes as were capable of Property and Dominion, were debarr'd from inheriting in Right of their Religious: Becauſe it is but fair that an Aſſertion, ſo often made, ſhould be back'd by ſome ſubſtantial Proof.* Not here one Word of *poſitive Acts, Statutes, Ordinances,* which he ſays, I challenge him to ſhew, not one Word of my objecting, *is it enough to ſay, it is the Commmon Law,* where theſe laſt Words, *it is the Common Law,* are Italick'd to make the Reader think they were my own, and conſequently, that I had granted it was Common Law, which I never did, nor has he proved it to be ſuch: On the contrary, as I have above once before taken Notice, he grants, that as to the Capacity of Religious Bodies acquiring through the Right of their Religious, our Law Books are *abſolutely ſilent:* So that it ſeems, the Objection was only made to make way for an Anſwer.

THE Seventh Objection relates to the Renunciation of Mr. -------- I will only here remark, *Firſt,* that I am ſurpriſed at his comparing the Settlements a Religious muſt neceſſarily make before his ſolemn Profeſſion, to the Contrivance of ſuch, as make ſome illegal Tranſaction, *To avoid the legal Conſequences of being ſeverally out-lawed.* Does he think a Perſon cannot in Conſcience before he retires out of the Kingdom, to receive his Ordination from the Church of *Rome,* make ſome Settlement, to ſcreen his Effects, from whatſoever may be the Conſequence of his retiring for ſuch Deſign?

BUT, *Secondly,* I am more ſurpriſed that a Perſon of his known Abilities ſhould ſo peremptorly aſſert, that *it is very well known that, by all Laws whatſoever, nothing but inherent veſted Rights and fixed Intereſts or what amounts to ſuch, can be tranſmitted to others, by Alienation, Donation, Teſtament, or otherwiſe.... If you take it as a Gift, Grant,* &c. *it muſt be of a fix'd veſted Intereſt. Inſine, take it which Way you will.....'tis Void, 'tis a Nullity, and can be of no Effect.* Such is the Sentence this Writer pronounces, I ſuppoſe in Conſequence to his Aſſertion, *That by all Laws whatſoever, nothing but inherent veſted Rights,* &c. *can be tranſmitted to others by Alienation, Donation,* &c. In anſwer to this I muſt deſire him and the Reader to reflect, that whereas I treat this Subject only as it is a Point of Conſcience, I am not to enquire whether a Donation, or any other Alienation of a future Right, or Expectance, would give the Perſon, in whoſe Favour ſuch Alienation has been made, ſufficient Title to bring an Action at Com-

mon

mon Law; but I am to enquire, whether ſuch Alienation of future Right, is not ſufficient to give the Perſon, in whoſe Favour ſuch Alienation was made, a Title in Conſcience to the Thing alienated.

He cannot be ſurpriſed at my diſtinguiſhing, betwixt an Alienation being a ſufficient Title to bring an Action at Common Law, and its being a ſufficient Title to bring an Obligation in Conſcience. Seeing he himſelf, *Page* 9. as I have already remark'd, grants that *in moſt Countries, Contracts, Promiſes or Obligations concerning Lands, if not in Writing, are Void, and ſo not binding as to Civil Effects, yet in many Caſes (if not in all) they may be good in Conſcience.* Conſequently, ſome Alienation of Property can be ſuch as to give a Title in Conſcience, tho' it does not give a Title which would be ſufficient to found an Action at Common Law. I ſay therefore that an Alienation, by *Donation* or *Renunciation* * is good in Conſcience, whereſoever there is no poſitive and expreſs Law, which declares and makes ſuch Alienation, by Donation or Renunciation, null and void. My Reader will obſerve, that tho' a Contract may not give a Title ſufficient to found an Action at Common Law, it does not follow, that ſuch a Contract is null and void, even in the Eye of the Law: For, a Contract to be null and void and of no Effect, muſt be antecedently invalidated by ſome poſitive Statute Law, declaring all ſuch Contracts null and invalid; and then ſuch Contract will not only, not be binding as to Civil Effects, but even not in Conſcience. This being out of Diſpute, and a Conſequence of what my Adverſary grants as cited, *Page* 9, it is no difficult Task to ſhew, that an Alienation of a future Right by *Donation* or *Renunciation* is valid in Conſcience. For whatſoever Right can be the Subject of a Contract valid in Conſcience, the ſaid Right may be the Subject of a free Donation, which Donation will be Obligatory in Conſcience, tho' it is not a Title ſufficient to ground an Action at Law. This is founded on natural Equity, and the general Laws of Property, according to which every Body has a Right to diſpoſe of what belongs to him, either by ſelling it, or giving it, or alienating it by any other Contract. For I do not believe that any Law whatſoever incapacitates ſuch as have Power to ſell their Property, from alienating their ſaid Property by Donation. But a future Right can be the Subject of a Contract valid in Conſcience: Therefore it can be the Subject of a *Donation* or *Renunciation*. That a future Right can be the Subject of a Contract valid in Conſcience, I believe undiſputed. For Example: *Peter* who has a Proſpect immediate or remote under certain Contingencies, of ſucceeding to an Eſtate or Eſtates, makes a Contract with *John* by which, on Conſideration of a certain Sum of Money, he makes over to him all his Rights, preſent and future during his Natural Life. By ſuch a Contract *John* undoubtedly ſucceeds to all the Rights of *Peter*, nor is it in *Peter*'s Power to invalidate the Contract; and whatſoever Eſtate falls to *Peter* will belong to *John* as his own Property, in Virtue of the Contract made betwixt him and *Peter*. It is no uncommon thing to ſell an Expectance: And we have ſeen, not many Years ago, the Expectance of a certain Nobleman's Eſtate which was to fall to the Crown under ſeveral Contingencies, we have, I ſay, ſeen ſuch an Expectance ſold; and tho' the Contract was afterwards broke by Authority, it was not becauſe the Alienation of an Expectance is in itſelf null and void, but for other weighty Reaſons. If therefore the Expectance of an Eſtate can be transferr'd to another by ſelling it, by what Law of Equity or Conſcience can he, who has Power to ſell, be hindred from making a free Gift of what he could ſell. Could not the Crown, in whom there was an undoubted Power to ſell the Expectance, of that Eſtate's falling under ſeveral Contingencies, have given that Expectance to one, ſo as to intitle him to that Eſtate if the Contingencies happen'd.

I will Inſtance in another Example: a Fiſherman, who is going to caſt his Net, can ſell his Right to the future *Prey*, and whatſoever Fiſh he takes, in ſuch caſt of the Net as was ſtipulated, will in Conſcience belong to the Perſon who bought the Right. But what Right had the Fiſherman in Virtue of which he could Contract with the other Perſon? Was there any *Jus ad rem* or *Jus in re*..... was there any *fixed inherent veſted Right*. No certainly: The poor Fiſh were enjoying their native Liberty, when he made the Contract, and conſequently he had in regard to them neither *Jus in re* nor *Jus ad rem*, nor could he have any *fixed inherent veſted Right* which he could alienate. What therefore Right did he alienate by the Contract? It was a Right, or rather the Expectance of a Right, he would, under ſeveral Contingencies, have had to the Fiſh, in Caſe he had not antecedently alienated that Right. In this Caſe the Fiſherman, who could ſell his future Right, could alienate it by Donation. Whence clearly follows, it is a Miſtake to ſay, that *nothing but inherent veſted Rights, and fixed Intereſts* can be tranſmitted to another by Alienation, Donation, &c. And it was an over haſty Sentence of my Adverſary, when he declared, that ſuch an Alienation, *is void, is a nullity* and *of no Effect*.

But,

* *Tho' the Word* Renunciation *may not be known in our Laws, in the Senſe in which it is here uſed, the Civilians and Canoniſts uſe it in this Senſe, as you may ſee in the Title,* de Renuntiatione Hæreditatis ſperatæ, *or* Tit. de donationibus: *And I will make uſe of it as they underſtand it, to ſignify a Donation by which a Perſon renounces in Favour of a Third, and, by thus renouncing, tranſfers to him ſome or all of his preſent and future Rights.*

BUT, says he, *Is it not very well known, that by all Laws whatever, nothing but inherent vested Rights and fixed Interests, or what amounts to such, can be transmitted to others by Alienation, Donation, Testament or otherwise?* I answer, no: It is so far from being known, *that by all Laws whatever*, &c. That on the contrary, it is known to every Body, who knows any thing of Canon or Civil Law, that future Rights, and Expectances of Inheritances, which we hope under certain Contingencies, can be transmitted to others by Alienation, Donation or otherways: excepting in some Cases, in which such Contracts are null and void, by a Law which has antecedently invalidated them. So by the Civil Law all Contracts and Donations, by which the Expectance of inheriting, such a determinate Person's Estate, is transmitted to another, are null and void, as it is expres'd, *l. ult. C. de Pactis*, because as the Text says, *Hujusmodi Pactiones odiosæ esse videntur, & plenæ tristissimi & periculosi eventus*, which *Glos. Ibid.* explains farther, *propter insidias, quæ parantur ejus vitæ, super cujus bonis paciscuntur.* But the same Laws, allow to make such Contracts, Donations or Renunciations, and by them transmit to another Person a future Right or the Expectance of Inheritances in general, which do not express the Succession of any particular determinate Person, See *l.* 3. Parag. *de illo, pro socio*, where this Contract of Society: *Si qua justa hæreditas alterius obvenerit, communis sit*, is approved. And the Reason why the Laws allow'd the transmitting to another, the uncertain Expectance of a future Succession, when it was the Expectance or Hopes of a Succession indeterminately, and would not allow of transmitting by Contract or Donation, or Renunciation, the Expectance of this or that Succession determinately, was that in the Case of a Succession, or Successions indeterminately, there is no Danger of the Evil Consequences, which the Law apprehended in the Case of some determinated Person's Inheritance, or rather the Expectance of it being made over. And for the same Reason *Corneus* with most others, *l. ult. C. de Pactis, fallentia* 3. says, that a Contract, or Renunciation of the Expectance of the Inheritance, even of a certain and determinate Person, can be made in Favour of a Community or Body corporate, because the Reason of the Law, *l. ult. C. de Pactis* ceases, by the Argument, *Gloss. in C. absit. ver. Sinistrum*, 11. *q.* 3. Moreover as *Bartolus* and others observe, *Pand. de actionibus empti*, a Contract concerning the Inheritance of a certain Person who is actually living, is not invalidated by the Civil Law, when such Contract is not Principally intended, but is made in Consequence to another Contract, by which the Contrahent is obliged to make over the Expectance of such Inheritance. Thus in the Case of Religious, they must, before their Profession, divest themselves of all present and future Right to any Personal Property, so the Donation or Renunciation they make, of the Expectance of a certain determinate Person's Inheritance, is not Principally intended, but it is a Consequence of the Obligation they are under, of divesting themselves of all present and future Rights. And this *Bartolus*, as cited, and others shew *Arg. l. siquis servum*, and it is expresly taken Notice of, *Glos. Ibid. verbo restitutum iri.*

FROM whence it is clear that some Laws acknowledge, that Expectances, Hopes of Inheritances, and future Rights, can be transmitted to another, by Alienation, Donation, Renunciation, *&c.* And consequently, where there is no positive Law or Statute, which makes such Alienations null and void, they are not, as the Gentleman was pleased to decide, *Void, a Nullity, and of no Effect.*

IT is true that a great many Canonists and Civilians teach, that a general Alienation, by Contract, Donation or Renunciation, of all present and future Rights, is invalid by the Civil Law; they take their Argument, *l. Stipulatio hoc modo Pand. de Verb. oblig.* So says *Clarus q.* 19. *n.* 1. and *Covar. Rub. de Testamentis p.* 2. *n.* 8. Their Reason is, because by such a general Alienation, they take from themselves the Power of making a Will, which is disapproved by the Laws. But *First*, other Canonists and Civilians, hold the Argument drawn from *l. Stipulatio hoc Modo*, to be of no Force; because, tho' the Law permits every Body, who is not otherways Incapacitated, to make a Will, it does not oblige them to make a Will, and consequently it is not against the Law, if a Person by some other Contract, takes it out of his own Power to make a Will; for Example, by voluntary divesting himself of whatsoever can be the Subject of a Testament or Will; which Power he has, as is evident, *l. in re mandata* 21. *C. mandati*, where it is said, that every Body is *Arbiter* and *Moderator* of what belongs to him.

Secondly, THE same Authors who think, a general Donation of all present and future Rights, is invalid in the Civil Law, except two Cases, in which they grant it is valid. The first is, when a Donation of all present and future Rights, is made in Favour of a Church or other pious Uses: See *Clarus q.* 20. *n.* 3. and *Covar. Rubr. de Testamentis p.* 2. *n.* 13. where he cites several other Authors, who teach, that this is the common Opinion. The second Case is, if such a Donation or Renunciation, in whose soever Favour it is made, is confirm'd by an Oath. See *Covar Cit. n.* 14. All this is certainly sufficient to shew, that the transmitting of future Rights, is not unknown to *all Laws whatever.* I have not here mention'd the Opinion of Divines as to this Point. I have sufficiently shewn what is their general Sentiment, in regard to Renunciations in the Case I stated relatively to the J-----TS, and I refer the Reader to what

I have ſaid there Page 3. Parag. *The ſame Reſolution.* In a Word, all Civilians, Canoniſts and Divines hold, that whoſoever has Power to tranſmit a Right by Contract, can tranſmit the ſame by Donation or Renunciation, becauſe every one is Moderator of what belongs to him. *l. in re mandata 21. c. mandati.* And this is conſonant to natural Equity, according to which, every one is Maſter to diſpoſe of his Rights, as he thinks proper. But the Canoniſts, Civilians, and Divines allow, that an expected Right, *(Hæreditates ſperatæ)* can be tranſmitted by a Contract, and conſequently, that they can be tranſmitted by Donation or Renunciation. From whence I will conclude this Point, on which *I* have dwelt longer than I had deſign'd, with this Inference: It is not contrary to Equity, to tranſmit to another, by Alienation, Donation or Renunciation, the Expectance of a Succeſſion and future Right: Therefore a Donation of future Rights is as binding in Conſcience as any other Donation, except in the Caſes in which ſuch Alienation, Donation or Renunciation is declared invalid by ſome poſitive Law: And conſequently, ſuch Alienation, Donation or Renunciation can give a Title in Conſcience, tho' it does not give a Title ſufficient to bring an Action at Common Law.

THE Eighth Objection is one of his own making, to throw, on the Cauſe I patroniſe, invidious Reflections, and make room for the Author to exſpatiate through almoſt three Pages, and indulge, not quite in ſo decent a Manner as he might have done, his own, or ſome other Perſon's Spleen againſt Eccleſiaſtical Laws and Power. The Subſtance of what he ſays in theſe three Pages, he had ſaid before in his Reflexions on the Five Propoſitions, he has ſo unfairly laid down as mine. My Remarks, on what he ſaid there, ſufficiently anſwer what he ſays here, and I have particularly reflected on his *Annotation* Page 24, where he ſo unguardedly cenſures the Catholics and Divines of King *James* the Firſt's Reign. Wherefore I will now ſay in ſhort, that the whole Anſwer to the Objection, which he made in thoſe Terms, only to Anſwer it, is a bitter Invective, and a falſe Aſperſion on the Canon Laws and Eccleſiaſtical Power. The Anſwer may be reduced to theſe Heads,

FIRST, That *Gratian, is the Compiler or Collector of the* Decretals, *that go by the Name of the* Canon Law; in which, he ſays, there are ſeveral Miſtakes.

SECONDLY, That my *whole Band of Caſuiſts ſeems to have inſiſted, that the Pope has exempted all the Clergy from any Subjection to Princes.*

THIRDLY, *That ſome of theſe Ciſalpine Divines go ſo far, as to ſay, that all Chriſtian Princes are under the Pope's Subjection even in Matters Temporal.*

THESE Three Propoſitions, which are undue Aſperſions of the Canon Law, aſſerted for no other End, than to make all Eccleſiaſtical Authority odious, in a Country where it has already but little Power, are not only apparently implied in this Part of the Gentleman's Diſcourſe, but expreſs'd in his own Words, which are Italick'd. I have ſhew'd before, in my Remarks on the Five Propoſitions, that he wrongs the Canoniſts when he accuſes them of any Uſurpation over Secular Authority in Civil Matters, and eſpecially in Matters relating to Property. I will here ſay briefly, relating to the Three Propoſitions I have extracted out of his Invective, that as to the *Firſt*, I am ſurpriſed, he ſhould take the Liberty to paſs ſuch bitter Cenſures on the Canon Law, as every where he does, with ſo little Knowledge of it, as to convince me he has never dipp'd into it, but has borrow'd what he ſays of it from Vouchers, who were as little acquainted with the Canon Law and Canoniſts, as he is himſelf. Otherwiſe he would never have told us, that *Gratian* is *the Compiler or Collector of the* Decretals, *which go by the Name of the* Canon Law. For every Body knows, that knows any thing of Canon Law, that the *Decretum Gratiani*, tho' it is Bound up with the other Parts of the Canon Law, has not the Force of Eccleſiaſtical Law, and, in Eccleſiaſtical Courts, is only cited as Authorities of different Doctors and Precedents. The Five firſt Books of the *Decretals* were compiled or collected by St. *Raymund de Pennafort*, by Order of *Gregory* IX. *An.* 1230, and the Sixth Book of the *Decretals* was added, as a Complement to the others, by *Boniface* VIII. about the Year 1300: Theſe Books of the *Decretals*, with ſome poſterior Decrees and Conſtitutions, are properly the Canon Law. I won't pretend to exempt it from all Error in every Point, I know that even *Boniface* himſelf, *c. Felicis* 3. *de Cenſibus in* 6. Corrects *cap. exigit* 2. which goes immediately before. I will only ſay, that abſtracting from thoſe Caſes, where a Law is corrected or abrogated by a poſterior Law, the Doctors of the Canon Law, learnedly vindicate thoſe Laws, from Errors or Contradiction, and allow to them where they have been received, Force of Law in all Eccleſiaſtical Matters, unleſs they have loſt the Force of Law by contrary Cuſtom or Statute.

I have ſhew'd the Gentleman before, that the Canoniſts and Divines do no where pretend, that any Eccleſiaſtical Juriſdiction whatſoever, as to Matters of mere Property and Civil Adminiſtration, extend farther

farther than the Temporal Territories of the Pope; but to put quite out of doubt this Point, which he has endeavour'd to repreſent in ſo odious a Light, I will add, to what I have ſaid before on this Subject, that the Divines and Canoniſts lay it down as a Rule, *Ex Can.* 6. *D.* 96. *&c.* 13. *V. Tria qui Filii ſint legitimi*, " That when the Canon and Civil Law are contrary to each other in Temporal Matters, " then each ought to take Place in its proper Tribunal, the Canon Law in the Temporal Territories " of the Pope, and the Civil Law in the Territories of the *Roman* Empire. " This, I ſay, is laid down as a Rule of Law by the Canoniſts and Divines, and the Reaſon they give for it is, " Becauſe in " Temporal and Prophane Matters, the Secular Power is not ſubordinate to the Eccleſiaſtical, nor " the Eccleſiaſtical to the Secular. " Wherefore the Divines and Canoniſts laying it down as a Rule of Canon Law, that in Prophane Matters, and of Property, the Secular Power is not ſubordinate to the Eccleſiaſtical; and that the Laws of each ought to be follow'd in their own Tribunals: with what Intent, but to aggravate the Hatred which ſome bare to all Eccleſiaſtical Power, can he repreſent it in ſo odious a Light, and affect to be in ſuch Terrors, for fear of farther Incroachments, as to cry out pathetically in the Words of Scripture, why ſhould we *bind our Princes in Chains, and our Nobles in Fetters of Iron?*

As to the Second of his Propoſitions, to wit, that my *whole band of Caſuiſts ſeems to have inſiſted, that the Pope has exempted all the Clergy from any Subjection to Princes.* I anſwer, that it ſeems he has not had the Leiſure to read thoſe Caſuiſts, and that thoſe who are to be his Vouchers for this Aſſertion, never read them, or have wilfully calumniated them; for they teach no ſuch Doctrine, as the Pope's having exempted, or even having Power to exempt, the Clergy or any other Body whatſoever, *from all Subjection to Princes:* On the contrary, they all teach, that Eccleſiaſtical Perſons and Communities, are, and ought to be, ſubject to Secular Power, in all that regards the Civil Adminiſtration.

As to the Third Propoſition, *That ſome of theſe Ciſalpine Divines go ſo far as to ſay, that all Chriſtian Princes, are under the Pope's Subjection even in Matters Temporal.* I anſwer, he ſhould have cited at leaſt ſome one Divine who has ever taught that Propoſition in the Latitude he gives it. I am ſure none of my *Band of Caſuiſts*, as he calls the Authors I quote, have taught it. A few Lines before, I ſhew'd, that Canoniſts and Divines lay it down as a Rule, that in Matters Temporal, the Secular Power is not ſubordinate to the Eccleſiaſtical. If any one Divine, I know none ſuch, has taught the Propoſition, I ſhall blame him; but without Canonizing the over zealous Endeavours of others to bring Eccleſiaſtical Laws, Canoniſts and Divines into Hatred and Contempt.

I will conclude my Reflexions on the Anſwer to the Eighth Objection with a ſhort Remark on the Parag. with which he concludes it. He excuſes there his ſpending ſo much Time in that Point, on the Neceſſity there was of his ſhewing the Impropriety of having this Affair *determin'd at* R..... *or by the Man of great Authority at* B. He tells us, he *could mention other Reaſons to prove how dangerous any ſuch Meaſure would be, to all who ſhould be concern'd therein; but I know no ſuch Propoſal will be hearken'd to.* I make this Remark; if the Impropriety of having this Affair determin'd at *R*..... or at *B*..... is eſſential in all Matters of Property relating to Regulars, as ſuch; then they have no Tribunal, in which they can have any Caſe of Property decided, for it is well known that Regulars, as ſuch, or as a Body corporate, cannot have any Relief at any Tribunal of this Kingdom: So either it will be in the Power of every one, even Catholic, to defeat them every where of a conteſted Right, or the adverſe *Lawyer* muſt be look'd upon as Judge without Appeal, to aſſert, or give away their Right as he pleaſes. As for the Antient Laws of this Realm, relating to Religious Communities acquiring through the Right of their Religious, he owns they are abſolutely Silent: As for the preſent Laws relating to Property of Religious Bodies, we know there are none by which ſuch a Cauſe can be tried. What then muſt be done? Why, I think, there would be no Impropriety in following what both Canoniſts and Civilians lay down as a Rule of Law out of *C.* 1. *de N. O. N.* to wit, that when the Canon Law is dubious in regard to Temporal Matters (in the Pope's Temporal States) and the Civil Law is clear, in ſuch Caſe, the Civil Law takes Place even in the Eccleſiaſtical Tribunals; and on the other ſide, when the Civil Law either does not decide the Caſe, or is dubious, and the Canon Law is clear, then the Canon Law is to be follow'd in both Tribunals. And conſequently, the Antient Laws being ſilent as to this Point, which is left undecided by our Municipal Laws, it ought to be determin'd by the Canon Law. But he tells us, he *could mention other Reaſons, to prove how dangerous any ſuch Meaſure would be, to all who ſhould be concern'd therein.* I know, all and every one, ought to be very cautious not to incur a *Premunire.* But I know there are ſeveral Circumſtances, in which Catholics cannot avoid having Recourſe to Meaſures, *dangerous to all who are concern'd in them.* I mean having Recourſe to *R*..... *or the Man of great Authority at* B..... for Example in ſeveral neceſſary Diſpenſations, and other Caſes purely Spiritual. There is no more Danger in the one than in the other, unleſs in the one the Diſappointment of a baulk'd Intereſt, might carry the Paſſions of

ſome ſo high, as to make them turn Informers, which I hear has been threaten'd in the preſent Caſe, and is ſcarce to be apprehended where no Temporal Intereſt is concern'd.

I come to the laſt Objection, which he has, as he did the others, dreſs'd up in ſuch Terms, as he himſelf could moſt conveniently, for his Deſign and Purpoſe, anſwer. Before I make ſome ſhort Remarks on this Anſwer, I cannot but mind my Reader, that ſuch a way of Writing is quite unfair. A Gentleman, who anſwers an Adverſary, ought not, to take from the Streſs of his Argument, much leſs ought he to make him ſay, what he does not, meerly to give himſelf an Opportunity, of throwing invidious Reflexions, on ſuch as maintain the other ſide of the Queſtion, and make them odious to many, whoſe ſtrong Prejudice in Favour of one Opinion will not allow them to ſearch into the Merits of the other: But above all he ſhould never make him ſay the contrary to what he affirms, and employ the greateſt part of his Writing in impugning what was never diſputed. Such a way of dealing can only aim at impoſing on the Ignorant, and making ſuch, as will not take the trouble of a farther Examination, judge the Caſe to be quite different from what it is, and upon a ſtrong Perſuaſion of its being ſuch, as is falſly repreſented, ſtand to the Prejudices, which ſome ſort of People are often unwilling to ſee removed. That this has been all along the Caſe, in the Paper I am anſwering, I have ſhew'd manifeſtly in the Second Part of this Writing, where I have made it clear, that in the Five Propoſitions he has given as the Subſtance of my firſt Paper, he has made me ſay what I do not ſay, he has left out the Streſs of what I ſay, and even made me ſay quite the Reverſe of what I ſay. That the greateſt part of his Writing is taken up in impugning what was never diſputed is clear, ſeeing the Subſtance of his Deſign is to prove, that by the Old *Engliſh* Laws, a Religious could make no Claim in his own Name and Right. This was never diſputed: The Queſtion was from the Beginning, whether Religious as a Body corporate could not Claim through the Right of their Religious. How little he has touch'd this Point will appear to the Readers, either of his Paper or mine.

I may, I think with Reaſon, expoſtulate with him, on ſo unwarrantable a Proceeding, and eſpecially for the groſs Miſrepreſentation he has made of the Canons, Canoniſts and Divines, whom he has traduced as ſubverſive of all Temporal Authority, and this meerly to aſperſe with odious Reflexions the Cauſe I defend. I think I have ſufficiently clear'd them from the Imputation. I cannot tell what was his real Deſign in Writing in ſuch Manner: Whether it was he miſtook the Caſe, and my Words in the Defence of it, or whether he writ under the Direction of ſome of his Clients, as appears by ſome of the Reflexions, I know him to be a Man of too much Honour, to have had any Deſign which he thought unjuſt. Tho', he will Pardon me, if I affirm that too Sanguine an Attach to the Cauſe he Patroniſes, has made him ſo far deviate from the Laws of Equity, as to uſe *Weight and Weight, Meaſure and Meaſure* in this Affair. What he pretends to prove both in this and the firſt Paper, which is placed N° 1. in the *Copies of Three Papers*, is that the Common Law is the Rule of Property and Conſcience, in Regard to the Claims of the Religious; but when the Common Law happens to favour the claims of Religious, Oh! then, they cannot in Conſcience make uſe of the Right allow'd them by the Indulgence of Common Law, but muſt ſtand to the Spirit of their own Conſtitutions. Which is in other Terms to ſay, when the Common Law is contrary to the Rights Religious have, they muſt ſtand by the Common Law, but when it is favourable to their Rights, they cannot in Conſcience avail themſelves of it. That no one may think I impoſe upon him, I refer my Reader to what he ſays, in the Paper placed by him N° 1. where at the bottom of the Third Page and beginning of the Fourth having granted, *That foreign Profeſſion was not by the Old Laws any Diſability*, he adds, that *foreign Profeſſion was as great a Diſability in Conſcience*, &c. On which I argue thus: The Diſability, which he pretends was brought on the Religious, by the Old Common Law, was a Diſability in Conſcience coming from the Common Law, or it was a Diſability in Conſcience, ariſing from the Nature of the Religious Vows, antecedently to any Diſability of the Common Law. If it was a Diſability in Conſcience proceeding only from the Common Law, it is evident that where there was no ſuch Diſability by Common Law, there could be no Diſability in Conſcience ariſing from the Common Law: And conſequently, as foreign Profeſſion was no Diſability by the Common Law, it could not be a Diſability in Conſcience from the Common Law, unleſs you will uſe Weight and Weight, Meaſure and Meaſure.

If he has Recourſe to the Second Member of the Dilemma, and ſays it was a Diſability in Conſcience, ariſing from the Nature of the Religious Vows, antecedently to any Diſability of the Common Law, then he muſt give up his Cauſe, and grant that the Common Law is not the Rule of Conſcience in this Caſe, and that the Rule of Conſcience is the Diſability ariſing from the ſolemn Profeſſion of a Religious; which Diſability, I have ſhew'd in the firſt Part of this Writing, to be different, according to different Orders; and a Diſability quite Perſonal, by which the Body or Community is no ways diſabled to acquire through the Right of their Religious.

In

In a Word, no Diſability, brought on Religious by the Common Law, could affect Religious whom the Common Law exempted from that Diſability; but Religious of foreign Profeſſion were by the Common Law exempted from ſuch Diſability; therefore they were not affected by the ſaid Diſability. And conſequently, in ſuch Caſe they could claim, as far as their own Vows and Conſtitutions, allow'd of by the Canons of the Church, would permit. Whether he foreſaw, or no, the Difficulty he would be brought into, I cannot tell; but he has made uſe of one of the moſt wonderful Evaſions I have ever heard of. It puts me in mind of ſome of the Machinery, which ſeems very ſurpriſing in Opera's. For he has, with one Motion of his Wand, tranſplanted into *England* all the *Engliſh* Catholic Monaſteries and Convents, which are diſperſed in different Kingdoms of *Europe*. The Nuns of *Sion* Houſe, like the Witches in *Mackbeth*, have in an Inſtant skip'd over from *Portugal*, to their antient Manſion, and I know not whether he has not mounted ſome of the Religious on *Perſeus*'s Horſe, to bring them from *Rome* to *London*. But to be more ſerious than ſuch a Subterfuge deſerves, more ſerious than he could be, when he ſought for ſuch an Evaſion: What can he mean when he ſays, *that ſuch a Profeſſion* (he means the Profeſſion the Religious now make in their Monaſteries beyond Sea) *cannot with any Propriety be called a foreign Profeſſion.* The Reaſons he alledges are, that *thoſe in* Engliſh *Houſes abroad are to be conſider'd, in this Caſe, as being undeſervedly in Baniſhment and in Exile: And all ſuch, by thoſe of that Perſuaſion are to be conſider'd in the ſame Situation exactly, as if they had Houſes and Foundations at Home.*

This is a ſtrange way of arguing indeed, and he might as well have concluded, that a Perſon who is undeſervedly in Baniſhment and in Exile, is truly and really in his own Country, from which he is baniſh'd, becauſe he is unjuſtly forced to be in another. Pray, Sir, by what Rule of Equity or Logic do you make this Inference. Becauſe the Baniſhment in which the Religious live is undeſerved, they ought not, as to their foreign Profeſſion, to profit of the Indulgence of the Old Common Law of *England*, which exempts foreign Profeſſion from the mention'd Diſabilities. If you will recollect what you ſaid a little before, you will find, that, according to the Senſe and Meaning of the Old Common Law of *England*, the Profeſſion of the Religious Abroad is in the greateſt Propriety a foreign Profeſſion. You ſay, towards the Beginning of the Fourth Page, ſpeaking of foreign Profeſſion, *The Reaſon why it was no Diſability was, becauſe the Fact could not be come at.....* and ſome Lines afterwards in the next Paragraph, *becauſe for the Judges to ſend a Writ to a foreign Biſhop, was to ſend a Writ to one who was not Subject to this Crown.....and therefore the Judges choſe to take no Notice at all of foreign Profeſſions.....* According to you, a foreign Profeſſion, in the Eye of the Law, was a Profeſſion which as to the Fact could not be come at, becauſe the Judges could not iſſue out a Writ in the King's Name, in Virtue of which a foreign Biſhop could be compell'd, to *certify if ſuch a* Monk, &c. *was Profeſs'd in ſuch a Houſe, in ſuch a Place, within his Dioceſe*, &c. Such Profeſſion was therefore in the Eye of the Law properly foreign Profeſſion, and conſequently, the Profeſſion of the Religious now abroad, is properly foreign Profeſſion; for, tho' even there was now in *England* a Catholic Tribunal where ſuch Cauſes could be tried, the Judges could no more iſſue out a Writ, to compel the foreign Biſhops to certify *if ſuch a* Monk, &c. Than they could formerly do in the ſame Caſe. I have dwelt longer on this Subject than I deſign'd, and I hope, Sir, you will Pardon me, if I think you have overlook'd the ſtrict Rules of Equity in this Affair, and made uſe of Weight and Weight, Meaſure and Meaſure.

In the laſt Objection; he makes his Adverſary ſay, that the Municipal Laws *cannot be binding in Conſcience being contrary to the Canon Law.....ſuch Municipal Laws* (as are contrary to the Canon Law) *cannot be binding either in Conſcience or Honour.* I anſwer, that no ſuch Objection was ever made. The Objection was, that a *Municipal Law* was not binding in Honour or Conſcience, when it was contrary to a Right a Religious Man had *by the Law of God and Nature*, if the Canon Law, relatively to which the Religious is Profeſs'd, did not make him renounce ſuch Right.....I appeal to all equitable Perſons, whether it is juſt, to ſubſtitute to my Words which are, *contrary to a Right a Religious Man had by the Law of God and Nature*, to ſubſtitute to them, I ſay, theſe others, *contrary to the Canon Law*, to make his Readers believe, that I ſet up the Canon Law, as deſtructive of Municipal Laws.

As for his Anſwer to this Objection, which begins thus, *To ſuppoſe that in Matters of private Property, Laws may be binding as to Civil Effects, and yet not binding in Conſcience, appears to me, to be of ſuch dangerous Tendency, that I can form no Conjecture or Imagination where it may End.* He had certainly quite forgot what himſelf before had ſaid, *Page* 9. to wit, that *Contracts, Promiſes or Obligations concerning Lands, if not in Writing, are void, and ſo not binding as to Civil Effects; yet in many Caſes (if not in all) they may be good in Conſcience.* It clearly follows, that if the Performance of

ſuch Contract is claim'd at Common Law, the Common Law will give it againſt the Claimant, and ſuch Law will be binding as to Civil Effects; notwithſtanding which he grants that the Claimant had a Right in Conſcience, and this Right doubtleſs ſubſiſts as to Conſcience, tho' it is defeated as to the Civil Effects of Common Law.

THIS he muſt grant: From whence then comes it that this Propoſition, *a Municipal Law may be binding as to Civil Effects, tho' it is not binding in Conſcience*, is now of ſuch dangerous Tendency. I have already ſufficiently clear'd this Point in the Second Part of theſe Remarks, to which I refer him and my Reader. I will add here, to put this in a clearer Right, that generally ſpeaking, the Laws of every Country, are not only binding as to Civil Effects, but alſo binding in Conſcience: Nevertheleſs, as I have already ſhewn, Municipal Laws are not always binding in Conſcience, even when they are binding as to Civil Effects, and this is often the Caſe in Relation to Laws founded on a *Preſumption*. For a Law founded on Preſumption ceaſes to oblige in Conſcience, when it is evident that the Preſumption is falſe, tho' ſuch Law is juſt, and remains binding as to Civil Effects. Thus in the Caſe in which I inſtanced before, *Peter* pays *John* a hundred Pounds which he ow'd him, without taking an Acquittance. *John* ſues for the ſaid Debt. *Peter* who has no Voucher is condemn'd to pay the hundred Pounds. The Law is juſt and equitable, becauſe the Law is grounded on this Preſumption, that the Money for which *Peter* can ſhew no Acquittance, has not been paid. Nevertheleſs *Peter*, to whom it is evident that he has only been caſt on a falſe Preſumption of the Law, has a Claim in Conſcience to this Property which the Law has given from him to *John*; and *John* who has the ſame Evidence that the Law has adjudged him the Property upon a falſe Suppoſition, has an Obligation in Conſcience to reſtore to *Peter* the ſaid Property. It is manifeſt therefore, that an Alienation of Property may be made by the Laws of the Realm without deviating from Juſtice, and the Proprietor, from whom it was alienated, retain at the ſame time a Right to it in Conſcience. A Law is, by the Civilians and Canoniſts, ſaid to be founded on Preſumption, when the Legiſlative Power, becauſe ſuch a thing is generally ſo, preſume it is always ſo, unleſs the contrary can be evidently proved: And, conſequently to this, the Judge is to give Sentence conformably to the Preſumption of the Law. You may ſee *Abbas in cap.* quia plerique, *Num.* 18. de Immunit. Eccleſ. *Covar. cap.* cum eſſet *n.* 9. *de Teſtament. Navar. cap.* ita quorundam de Judæis. Notab. 10. n. 29.

WHAT I have ſaid is enough to ſhew that Laws, binding as to Civil Effects, are not always Obligatory in Conſcience, eſpecially when ſuch Laws are contrary to a Right, which any one has by the Law of God and Nature. For in the Caſe of ſuch Law, it can only be founded on a Preſumption, that the Perſon, whoſe Claim is defeated by the Law, has not a Right founded on the Laws of God and Nature. Thus the Old Law of *England* preſumed, and preſumed according to Truth, that a Religious by his Profeſſion renounced all Perſonal Right, and conſequently deny'd him all Claim in his own Name and Right. But had the ſaid Law, which it never did, preſumed, that by the Profeſſion which diſabled the Profeſs'd Religious from all Perſonal Right, the Houſe wherein he was Profeſs'd was diſabled to make any Claim through his Right, ſuch Law would have been grounded on a falſe Preſumption, and conſequently not Obligatory in Conſcience. I mean unleſs ſome Law, whether Eccleſiaſtical or Secular, ſubjected the Profeſs'd Religious to ſuch Diſability, antecedently to his Profeſſion; and whereas no ſuch antecedent Law can be produced amongſt our Old Laws, which are *abſolutely ſilent as to this Point*; and the Eccleſiaſtical Laws or Canons, relatively to which he is Profeſs'd, bring no ſuch Diſability, but on the contrary declare, that the Community ſucceeds to all the Rights he has not diſpoſed of before his Profeſſion; it follows, that a Law would not be Obligatory in Conſcience which ſhould lay on a Religious or a Religious Body a Diſability, on Preſumption of his being by his Profeſſion under ſuch Diſability; if the Preſumption is falſe, and he or his Body are not by their Religious Profeſſion under ſuch Diſability. As for thoſe Words *derogatory from Canon Law*, I have told the Gentleman before, that it is not pretended nor meant, that the Canons, by any poſitive Law, give a Religious a Right to any Property, which Right he had not before by the Law of God and Nature; or that the Canon Law gives him a Property, which he has not by the Law of his Country; but only that the Canons declare, that he is not, by his ſolemn Profeſſion, diveſted of a Right he antecedently had by the Law of God and Nature, and by the expreſs Council of our Saviour Jeſus Chriſt, to conſecrate himſelf and whatſoever he has to the Service of Almighty God.

THE Caſe the Gentleman has put in his Annotation is quite out of the Way. And neither *Lugo*, *Layman*, *Leſſius* nor *Vitus Pichler*, would have adviſed the Superior to ſeize clandeſtinly in Right of their Profeſs'd Religious, what Money her inteſtate Mother had left in their Hands; knowing, that in *France*, Religious have renounced the Right they had of ſucceeding in Right of their Profeſs'd Religious.

But

But if the Caſe is put in a Country where the Religious enjoy their Rights, then *Lugo*, *Layman*, *Leſſius*, and *Vitus Pichler*, would have counſell'd the Superior, if her Profeſs'd Religious was the only next of Kin, to ſeize that Sum, not clandeſtinly, but to Claim openly whatſoever had been left by the Mother of their Religious: and the *Biſhop*, far from complaining, and endeavouring *to get thoſe Caſuiſts for ever baniſh'd out of the Kingdom*, would approve of the Counſel they had given.

The Gentleman, before he concludes, puts a Caſe in moſt Pathetic Terms, the Subſtance of which is, that it may ſo fall out, that a Profeſs'd Religious will be next of Kin to a conſiderable Perſonal Eſtate, of which his Body will claim a Share through his Right, tho' at the ſame Time, his Siſters have left Children and Grandchildren, totally unprovided, who would have been the only next of Kin to this Perſonal Eſtate, if the aforeſaid Religious had been really Dead, or if his Civil Death, as he thinks it ought, had in this Caſe the Effect of a Natural Death. Then he cries out, *Can any thing be conceived more hard than this?* I anſwer, it would be very hard indeed. But *Firſt*, it would have been the ſame Hardſhip, and ten thouſand to one much harder, if this Profeſs'd Religious who is next of Kin, had not been a Profeſs'd Religious; for then the poor deſtitute Grandchildren of his Siſter, would have had little or no Hopes of Relief from their great Uncle, eſpecially if he had been Married and had Iſſue of his own. Whereas I defy him to ſhew or produce one Inſtance (the Caſe has happen'd a thouſand times ſince the Reformation) in which a Profeſs'd Religious next of Kin to an Inteſtate, has not made over with the Leave of his Superiors, all, or almoſt all ſuch Eſtate falling to him from the Inteſtate, to his next of Kin, not only when they were Deſtitute, but whenſoever the Law of Charity, or the Preſervation of Catholic Families has ſo required. He ſhould have diſtinguiſh'd betwixt an Obligation, which in ſuch Occaſions may ariſe from the Law of Charity, and an Obligation in Juſtice; we readily grant, that in the Caſe ſuppoſed by him, Charity would require, that the Profeſs'd Religious ſhould make over, to the Deſtitute next of Kin, at leaſt part of what is his by the Law of Juſtice. As therefore there is much more Probability, that the deſtitute Grandchildren will be relieved, if the next of Kin is a Profeſs'd Religious, than if he remains in the World, eſpecially if he is Married; the Gentleman ſhould, inſtead of exhorting Parents, not to permit their Children to Profeſs in a Religious Order, that will not renounce its juſt Rights, he ſhould, I ſay, have exhorted them not to let the younger Brothers Marry, for Fear, that if the elder Brother died Inteſtate, his Siſters Grandchildren, who are reduced from opulent Fortunes, ſhould remain in their deſtitute Condition, ſuch a conſiderable Share of the Perſonal Eſtate belonging to the ſecond Brother, and after him to his Heirs. Does not every Body ſee that either of theſe Exhortations are equally ridiculous; and as there is more likelihood, of the deſtitute Children being relieved, in Caſe of the Religious next of Kin, than in Caſe of the Secular, it cannot be look'd upon as a Hardſhip, in regard to thoſe deſtitute Children, if the ſaid Eſtate of the Inteſtate, in Juſtice belongs to the Religious. I cannot but take Notice of theſe Words: *It is abſolutely neceſſary to make a ſtand in this Caſe, and to come to ſome poſitive and final Reſolution concerning it.* Theſe Words ſound as if he was in the Humour to make himſelf Legiſlator, and determine poſitively and finally the Caſe. The Gentlemen whoſe Cauſe I defend, will always be ready to *come to a poſitive and final Reſolution*, and ſubmit to ſuch whenever made by lawful Authority. I hope neither he, nor any private Perſon of whatſoever Dignity, will arrogate that to themſelves. He has already refuſed, *Page* 25. Parag. *the Reader*, the only Tribunal, where, in the Circumſtances of this Nation, ſuch a Caſe can be poſitively and finally Reſolved; at what Tribunal will he have it tried? His own Reſolution is, that the Catholics ought *to make it a fix'd and determinate Purpoſe in every Family, never to permit a Child to go into any Monaſtery or Convent, which does not abſolutely diſclaim, in the moſt public Manner, and as the avow'd Maxims of their Order, all the Rights, Claims and Demands, ſet up and inſiſted on in the preſent Caſe.* As to this: *Firſt*, I believe there is no Religious Order would *abſolutely diſclaim, in a moſt public Manner, and as the avow'd Maxims of their Order*, all their Rights, to have on ſuch Condition, a Child of any Family whatſoever. *Secondly*, I believe that moſt Catholics in *England* will think, that they cannot in Conſcience hinder their Children from taking to Religion, if they have ſufficient Reaſon to believe their Children enter into ſuch Reſolution, upon true and ſolid Motives of Piety and Virtue. *Thirdly*, I believe that moſt Catholics in *England*, would be very ſorry to ſhut the Doors of Religious Houſes to their Children; thoſe Refuges being one of the greateſt Helps to moſt Catholic Families, who with little or no Expence generally in regard to their Sons, and with very inconſiderable Expence in regard to their Daughters, can ſee them decently and honourably provided for in ſuch Houſes. Wherefore, I am of Opinion, this Writer will not find the Catholics ſo ready, *to make it a fix'd and determinate Purpoſe*, not to enter into Religion, unleſs the Houſes and Monaſteries into which they enter, publickly and ſolemnly diſclaim all their Rights. I think he would have given much better Advice to the Catholics, if he had counſell'd them, when younger Children enter into Religion (when elder Brothers do, it is generally

taken

taken care of) to perſuade them to make over all, or the greateſt Part of their Rights to their next of Kin. This will never be oppoſed by the Religious, eſpecially if ſuch Parents do not, when their Children enter into Religion, caſt of all Paternal Regard towards them, but ſettle upon them ſome ſmall Annuity, according to the Circumſtances of every Family. This would be much better for the Catholics, than to ſhut to their Children the Entry into Religious Houſes, which are not only Refuges for Virtue, but alſo a great Eaſe to Families, who are often over-burthen'd with younger Children. And it was upon this very Motive that the Clergy of *France*, aſſembled in the Year 1685, ſupplicated the King of *France*, to recall his Edict of 1667, by which he had forbid the Monaſteries to receive Dowries and Annuities for their Religious. It was reſolved by the Clergy in that Aſſembly, to ſupplicate the King in the Words of St. *Ambroſe* to the Emperor *Theodoſius*, in which he deſired him to recall a Law he had made, that on the one ſide he might not be wanting in the Obedience he ow'd him, and on the other ſide he might not fall into the Inconveniences, inſeparable from that Law. The King declared himſelf to be of the Opinion of the Clergy, tho' the Declaration was not publiſh'd till ſome Years afterwards, and dated *April* 28, 1693.

I come to the Gentleman's Concluſion, and tho' I could wiſh he had not attributed to my Divines, as he calls them, *ſtrange*, *pernicious* and *unwarrantable Maxims*, which he would not have fix'd on them, had he been more converſant in their Works, I can aſſure him, I am far from taking ill any Perſonal Reflexion he has made upon myſelf, and that, as I ſaid before, I look upon ſome Propoſitions, which I think unguarded, rather as Sallies of an over ſanguine Attach to the Cauſe he defends, than deſign'd Reflexions, on thoſe, for whom in his Concluſion, he is ſo obliging as to profeſs an Eſteem. Sir, I have always had a particular one for your Perſonal Character, as well as Family; I hope, I have ſaid nothing in this Paper contrary to it, and that you will think it is quite inadvertently, if any where I have deviated, contrary to my Deſign, from the Promiſe I made, of being in theſe Remarks as tender of your Character, as I am of the Cauſe I defend.

REMARKS
ON THE
APPENDIX.

THE Appendix is a Letter from a D. D. in which he briefly reſolves the Caſe in the Negative. What is ſaid, in the Paper I anſwer, *Page* 20. in an *Annotation* concerning this Gentleman's Learning and Abilities, is not more than what he deſerves: To which I will add, that beſides giving his Opinion as a Divine, he has done it like a Gentleman, confining himſelf to what he endeavours to prove on one ſide, and refute on the other, without giving way to injurious Reflexions on the Abettors of the Opinion he diſapproves; which I am ſorry cannot be ſaid of the other Writings that have been printed againſt the Anſwer in the Affirmative.

I will endeavour to be as conciſe in theſe Remarks as the foreſaid Gentleman is in ſtating the Caſe; wherefore I will deſire the Reader to obſerve, *Firſt*, that the Caſe as it was ſtated to him, regarded the Right of Religious in general, ſo it is no wonder he does not ſtate it, nor anſwer it, in regard to the Rights of the J----TS in particular, who having renounced the Benefit of the Canon and *Juſtinian* Law, by which Religious can ſucceed *ab Inteſtato* in Right of their Profeſs'd, ground their Pretenſions on quite a different Title, as is explain'd at large in the Caſe ſtated relatively to the Conſtitutions of the Society of J----TS. *Secondly*, tho' the J----TS are truly a *Mendicant* Order, none but there Profeſs'd Houſes are incapable of poſſeſſing *Bona ſtabilia*, their Colleges and Novitiats and other Houſes can poſſeſs *Bona ſtabilia* in Common, as all the World knows.

WHEREFORE the Negative, maintain'd in the Appendix, regards the Right which Religious in general, not excepted by the Council of *Trent*, have by the Canon and Civil Laws, to ſucceed *ab Inteſtato*, through the Right of their Profeſs'd Religious. In regard to this Right (tho' it has nothing to do with the preſent Caſe, as circumſtantiated to the J----TS) which Religious Bodies or Communities have to ſucceed to the Inteſtate, it is the undoubted Opinion of all Canoniſts and Divines, that I could ever ſee or hear of, that have treated this Queſtion, excepting *Van Eſpen*, who in the Title of a Chapter denies the Religious this Right, tho' in the Chapter itſelf, he only proves that they are deprived of ſuch Right in *France*, and in *Dutch Flanders* (*Belgium*) by the Laws of thoſe Countries. The Authors cited in the Appendix, whether Canoniſts or Civilians, ſay no more than that in ſuch and ſuch Countries, the Religious enjoy not the Benefit of the *Juſtinian* and Canon Law, becauſe of the contrary Laws of thoſe Kingdoms.

WHAT he cites out of *Benedictus*, *ad caput Raynut.* &c. regards only the particular Diſpoſition of the Laws of *France*; for *Benedictus*, in the Place cited, grants that in other Places Religious had that Right, which they could not enjoy by the Laws of *France*. His Words are, *Quoniam hæc omnia juris Communis ſtatuta in regno Franciæ non ſervantur quoad Religioſos, quia non ſubeſt Imperatori qui tales leges concludit. Rebuff.* ſays no more than *Benedictus*, and only calls it a Cuſtomary Law of *France*. The ſame is to be ſaid of the Notator of *Tours* and *Coquette*. What is cited out of *Gudelinus*, as well as what was before cited out of *Benedictus*, ſhews clearly that they thought Religious remain'd in Poſſeſſion of the Right they have by the Canon and *Juſtinian* Law, excepting in *France* and *Flanders*. *Gudelinus*'s Words in the Place cited are, *Magna Pars Superiorum Queſtionum ceſſat moribus ſeu legibus harum regionum & regni Franciæ.* He would certainly have mention'd it, if he had thought the Practice of the Neighbouring Countries, had been the ſame with that of *France* and *Dutch Flanders*. *Zypæus* ſpeaks only of the Cuſtom and Laws of *Flanders*, his Words are *Apud nos*; and *Peres* ſpeaks only of *France* and *Flanders*, his Words are, *in Belgio & Gallia..... Monachi Profeſſi non ſuccedunt Parentibus.*

It is a Miſtake in the Appendix to aſſert, that the Conſtitution of *Charles* the Fifth, is the ſtanding Rule for *Spain*, *Germany*, the *Low Countries* and great Part of *Italy*. It was not an Imperial, but a particular *Conſtitution*, given at the Requeſt and for the Province of *Flanders*. This will appear from its being originally in Old *French*, as reported in *Stockmans*'s *Deciſion: Brabant*. Deciſ. 6. This *Stockmans* was Profeſſor of Canon Law at *Lovain*, and Counſellor of *Brabant* and Deciſ. 6. ſays expreſly, *Edictum..... Cum Flandrenſi Provinciæ, & ad poſtulationem Ordinum ejuſdem ditionis Scriptum ſit*, &c. Whence it appears that all the Authors, cited in the Appendix, ſhew no more than that, by the particular Laws of *France* and *Flanders*, the Religious ſubject to thoſe Dominions do not enjoy the Benefit of the *Juſtinian* Law.

The Appendix miſtakes the expreſs Meaning of *Nicol.* 1. *Can. Præſens.* 20. *q.* 3. He does not complain that *Lambert* had been forced to put on a Religious Habit, and on that Occaſion was excluded from the Paternal or Maternal Succeſſion; but *Lambert* complain'd to *Nicholas* of a double Injury, the firſt of being forced into Religion, the ſecond of being deprived by his Brothers of the Paternal or Maternal Succeſſion: Thus *Gloſſa* on the ſaid Canon *V. in locum*, where it is ſaid expreſly, *Loquitur hoc caput ſecundùm quorundam pravam Conſuetudinem, qui Monachos non admittunt ad Succeſſionem, quod eſſe non debet.* So, that Canon is far from being of any Weight againſt the Right of the Religious. What is cited out of *Marculfus* makes nothing to the preſent Queſtion, for tho' there was a particular form uſed in Donations to Convents, it no ways follows that they were excluded from Succeſſion. On the contrary, the expreſs Text of the *Juſtinian* Law adopted by the Canon Law, ſays that Religious Monaſteries ſhall ſucceed not only to their Inteſtate Religious, but alſo in Right of their Religious, to whatſoever Inheritance was his Due had he not been Religious. See *Can. ſi qua Mulier.* 19. *q.* 3. where it is expreſly ſaid Parag. 3. *ſed ſi poſt*, that if a Religious Perſon who has left Children, dies without making a Partition of his Subſtance, the Children ſhall have only their Legitimate, and the reſt of the Subſtance ſhall belong to the Monaſtery. There is no Diſtinction in any of the *Juſtinian* Laws, betwixt what was the Religious Perſon's before he was Profeſs'd, and what falls to him from his Kindred after his Profeſſion: on the contrary, almoſt all Canoniſts and Divines ſuppoſe as a certain Truth, that Religious Orders capable of poſſeſſing immoveable Goods in Common, ſucceed to the Inteſtate Relations of their Religious, as I have ſufficiently ſhew'd, Page 14. of my Anſwer to the Appendix in the Writing which had for Title, *The Relations of Mr.* T----bt, *&c.* To which I will only add, that a great many of them with *Covar. cap.* 1. *de Teſtamentis. n.* 31. ſay that a Monaſtery can take an Inheritance which is fallen to one of its Religious, whether he will or no, and even that it can take it after his Death, if the Inheritance fall before his Death. See alſo, *Navarr. Comment.* 2. *Num.* 4. & 30. This certainly ſuppoſes an Inheritance from Laymen, as indeed all Divines and Canoniſts do, when they treat this Queſtion; for from whom elſe can ſuch Inheritances fall?

The *Appendix* takes Notice that the Council of *Trent* has not a Word about the Religious inheriting *ab Inteſtato:* and that is very true, but nothing to the Point in Queſtion; becauſe no one pretends that it is a new Right acquired to the Religious, by the Conceſſion of the Council of *Trent*, but that thoſe Religious, who by the Council of *Trent* can poſſeſs immoveable Goods, have by the *Juſtinian* and Canon Law, a Right to acquire them by Inheritance.

Whatsoever therefore has been alledged in this Appendix does not in the leaſt weaken the Authority by which I proved, in the Writing before cited Page 14. that Religious, not excepted by the Council of *Trent*, can ſucceed in Right of their Profeſs'd Religious, either by Will or *ab Inteſtato*, in all thoſe Countries where they are not deprived of the Benefit of the *Juſtinian* Law. The Gentleman has indeed proved very clearly, that in *France* and *Flanders* they cannot ſucceed, becauſe the particular Laws of thoſe Countries have otherways ordain'd. But this cannot affect Religious of *England*, who are not Subject to thoſe *French* or *Dutch* Laws. The Appendix affirms, that as to *England*, it is *proved in the Proofs of the Negative*, that a Profeſs'd Religious could not, nor his Body for him, inherit from a Layman. He had better have ſaid, it *was aſſerted* in the Proofs of the Negative, for the Anſwer in the Negative only aſſerts it was ſo, by the Old *Engliſh* Laws, without bringing any Proof of it. The Gentleman who writ that Anſwer in the Negative, has ſince publiſh'd the Paper on which I have made the foregoing Remarks, and proves very eruditely, that a Profeſs'd Religious, could not bring an Action in his own Name and Right according to our antient Common Law, which had never been denied: but he is ſo far from proving that a Religious Body could not inherit for, or through the Right of their Religious, that he grants, our Laws are *abſolutely Silent* as to that Point, and the only Authority he cites, which is from the Feudal Laws of *Scotland*, by Sir *Thomas Craig*, is a very ſolid Proof for the Affirmative, in Favour of the Religious, as I have ſhew'd Page 18.

WHAT is said in the Appendix as to the Disability of Inheriting according to the Primitive Practice, for which he cites *Theodosius* the younger, makes nothing to the present Point, in which the Religious ground their Right on the *Justinian* and Canon Law. Not that those Laws give them any Right to Property, which they have not by the Law of God and Nature; but because the Canon Law, relatively to which they make their Profession, having adopted the *Justinian* Law, declares, that by their Profession they do not bring upon themselves a Disability, such as is pretended by the Answer in the Negative.

I deny that this pretended Disability is conformable to the universal Meaning of the Vow of Poverty; for the Meaning of the Vow of Poverty is, to bring a total renouncing of Property Personal, but not a total renouncing of Property in Common, as is evident to all Mankind, who have consider'd the Vow of Poverty. This Vow, as it is well known, brings different Obligations in regard to Property, according to the different Rules relatively to which it is made; and no one can extend the Obligation it brings upon a Religious, beyond what Obligation he intended to take upon himself, according to the Spirit of his Rule. And tho' by that Obligation he deprives himself of the Property to which he had an antecedent Right by the Law of God and Nature, he does not deprive himself of the Right he has by the Law of God and Nature, to transfer all his Rights on the Community of which he is a Member.

WE grant the Council of *Trent*, as to the Discipline, has not been received, and consequently does not oblige here. But what is that to the present Purpose. It was no where affirm'd that the Council of *Trent* gave the Religious the Right in Question, it is a Right they had antecedently, and the Decree of the Council is only brought by the Divines, to shew to what Religious this Right appertains; which we affirm to be all those, who, by the Council of *Trent*, can possess immoveable Goods in Common.

IT was no where asserted, *that any Body of Men should pretend to be exempt from prior general Laws made to restrain their Power.* On the contrary it was supposed, that *the prior general Laws* could not regard nor include a Body of Men in their corporate Capacity, whose Constitutions in regard to Property are quite different from those, who were the Object of those *prior general Laws*, which are falsly supposed to have been the Practice of *England*. So, according to a *prior general* Ecclesiastical Law, all Religious, as soon as they had taken their Religious Vows, were entirely devested of all Property Personal. Can any Body say, that it is *a strange piece of Casuistry* to assert, that the J----TS pretend to be exempt from those prior general Laws, and to retain Personal Property after the Vows by which they become truly Religious? Have not most Catholic Countries received them without any Restraint upon their own Constitutions; notwithstanding the *prior general Laws*, which put several Restraints upon other Religious, did not the Council of *Trent*, expresly 25 *Sess. C.* 26. declare it did not intend to comprehend them in the *general Law* which was made for other Religious? What *strange piece of Casuistry* is it therefore to assert, that such *prior general Laws* could not regard a Body of Men who were not existent when such Laws were made, and whose Constitutions, in regard to Property, are quite different from those of other Religious, to restrain whom such *prior general Laws* were made.

IT would be strange indeed to assert, *that Catholic Laws should be look'd upon as an Oppression of the Religious, and Protestant Laws as Favourers of them.* But this was no where asserted. I have in the Course of these Papers clear'd the Answer in the Affirmative from the Aspersion, and evidently shewn, that in the present Case, the Religious have no Recourse to any Protestant Laws, nor any *Anticatholic abrogating Act.* Can the same be said of those, who threaten'd their Adversaries with *Westminster-Hall*, Informations, Discoveries, *&c.* For what could any such expedient avail them, without making use of Anticatholic Laws with a Witness?

To conclude: It was never asserted by those who answer'd the Case in the Affirmative, that any Religious Man could, in his own Name and Right, claim any Property Personal; but it was asserted, that the Community or Body corporate of Religious, could claim through his Right. And whereas, *First*, it is the constant Opinion of all Canonists and Divines, I can see or hear of, excepting *Van Espen*, that all those Religious who can possess immoveable Goods in Common, can in the Right of their Profess'd Religious succeed either by Will, or *ab Intestato*, wheresoever the particular Laws of the Country they dwell in do not restrain that Right..... and whereas *Secondly*, there is not, and it cannot be proved that there ever was, in *England*, any Law by which Religious Communities were debarr'd from acquiring through the Right of their Religious, it being granted that the Laws are *absolutely Silent* as to that Point: it follows, that the Case was rightly answer'd in the Affirmative; and that *B.* could, with a safe Conscience, lend his Name to the Body of which he was a Member, in order to secure to them, what I humbly conceive to be their undoubted Right.

Fifth, THAT Religious have no Remedy in Antient Law, nor the Repeal of any [illegible] Law.......

Secondly, THAT in the Defence of the Affirmative nothing was said [illegible] to the Secular Legislative Power, nor the Civilian Law any where set above it in Matters of Property and Civil [illegible] [illegible]; but that on the contrary, the Canonists and Divines agree that the Secular [illegible] Power is independent of the Ecclesiastical, in all that relates to Property, and Civil Administration.

Thirdly, THAT the Laws [illegible] which are pretended to be contained in the Paper [illegible] [illegible], neither as to the Words or Sense, any ways contain'd in that Paper, but even the [illegible] of them.......

Fourthly, THAT there was no antient Law in *England*, by which Religious Communities were made incapable of succeeding, through the [illegible] of their Religion, to Personal [illegible] ....

We must conclude, that the [illegible] C[illegible] rightly adjudg'd [illegible] the Affirmative with regard to [illegible] [illegible], and the [illegible] in particular. Wherefore, [illegible] for these Reasons [illegible] [illegible] [illegible] to a Corporation, the [illegible] of the [illegible] Laws, [illegible] which [illegible] [illegible] [illegible] [illegible] upon, [illegible] any [illegible] [illegible] [illegible] [illegible] [illegible] that they were [illegible] to [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]. For [illegible] they [illegible] [illegible] [illegible] they [illegible], that by the [illegible] were [illegible] [illegible], they [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] as to the dividend, was [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] the most [illegible] [illegible] [illegible] [illegible] of the [illegible] [illegible] [illegible] no more, and [illegible] the [illegible] ....